92-03756/

Ombudsman Manitoba

Third Annual Report of the OMBUDSMAN

For the period
January 1st, 1990 –
December 31st, 1990

Presented to the Legislature pursuant
to Section 55 of
The Freedom of Information Act

Ombudsman Manitoba

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The Honourable Denis Rocan
Speaker of the Legislative Assembly
Province of Manitoba

Dear Mr. Speaker:

In accordance with Section 55 of The Freedom of Information Act, I am pleased to submit the report of the Ombudsman for the calendar year January 1, 1990 to December 31, 1990.

Yours very truly,

Gordon S. Earle

Gordon S. Earle
Ombudsman

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Introduction

The year 1990 was the second full calendar year during which the Ombudsman served as an avenue of appeal for individuals with complaints under The Freedom of Information Act. The Freedom of Information Act was enacted in 1985 and proclaimed in force September 30, 1988. There were eight formal complaints lodged with the Ombudsman in 1988, forty-eight in 1989 and forty-eight in 1990.

Under The Freedom of Information Act an applicant for access to information, when refused information, has a right of appeal to the Ombudsman and a further right of appeal to the court when access continues to be refused after a complaint has been filed with, and investigated by, the Ombudsman. While in 1990 the Ombudsman dealt with forty-eight complaints, the court heard one appeal. This court case is described later in this report.

Statistical Information

Number and Types of Complaints

It is interesting to note that the year 1990 was similar to 1989 with respect to the number of complaints made under The Freedom of Information Act. In 1989 twenty individuals filed a total of forty-eight complaints with the Ombudsman. In 1990 once again only twenty individuals filed complaints and again the total number of complaints was forty-eight. Of the twenty individuals using the appeal process in 1990 one person filed twenty-six complaints, another filed three, a third person filed two, and the remaining seventeen filed one complaint each. Hence we note that three out of twenty people or 15% of those using the complaint process had more than one complaint regarding access to information. In chart form this information is as follows:

Number of individuals complaining	Number of complaints per person
1	26 (26)
1	3 (3)
1	2 (2)
17	1 (17)
Total of 20 complainants	Total of 48 complaints

The four situations when applicants may wish to launch an appeal to the Ombudsman under The Freedom of Information Act are:

1) where the applicant has not received a reply to an application within the thirty-day response time (a presumed refusal of access);

2) where an applicant has received, and objects to, notice that the government wishes to extend the thirty-day response time;

3) where an applicant has been refused access to all or part of the record applied for; and

4) where an individual has a complaint relating to the adequacy and availability of The Access Guide.

Of the forty-eight complaints received in 1990:

6 concerned a presumed refusal of access;

3 were contesting extensions to the thirty-day response time; and

39 involved the refusal of access to all or part of the records sought.

There were no formal complaints lodged concerning the adequacy and availability of The Access Guide.

Conclusion of 1989 Complaints

There were four complaints carried over to 1990 from the previous year. One is pending the other three were concluded as follows:

No.	Department/Other	Complaint	FDR (Finding; Disposition; Result)
1.	Culture, Heritage and Recreation	Refused access to records	Supported; Resolved Informally; No Action Required
2.	Health	Refused access to records	Not Supported; Report Dismissing Complaint; No Action Required
3.	Highways and Transportation	Refused access to records	Not Supported; Report Dismissing Complaint; No Action Required
4.	Industry, Trade and Tourism	Refused access to records	Pending

1990 Case Record

No.	Department/Other	Complaint	FDR (Finding; Disposition; Result)
1.	Corporations and Extra Departmental (Manitoba Arts Council)	Refused access	Pending
2.	Executive Council	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
3.	Executive Council	Refused access	Pending
4.	Executive Council	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
5.	Family Services	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
6.	Finance	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
7.	Health	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
8.	Health	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
9.	Health	Refused access	Pending
10.	Highways and Transportation	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
11.	Highways and Transportation	Refused access	Pending
12.	Industry, Trade and Tourism	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
13.	Industry, Trade and Tourism	Refused access	Pending
14.	Justice	Presumed refusal	Supported; Report with Recommendation; Remedial Action
15.	Justice	Presumed refusal	Supported; Resolved Informally; No Action Required
16.	Justice	Refused access	Partially Supported; Resolved Informally; No Action Required
17.	Justice	Refused access	Pending
18.	Justice	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
19.	Justice	Refused access	Not Supported; Report Dismissing Complaint; No Action Required

No.	Department/Other	Complaint	FDR (Finding; Disposition; Result)
20.	Justice	Refused access	Pending
21.	Labour	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
22.	Manitoba Public Insurance Corporation	Refused access	Supported; Report with Recommendation; Insufficient Action
23.	Manitoba Public Insurance Corporation	Refused access	Supported; Report with Recommendation; Insufficient Action
24.	Manitoba Public Insurance Corporation	Refused access	Supported; Report with Recommendation; Insufficient Action
25.	Rural Development	Refused access	Undetermined; Discontinued by Complainant; Not Action Required
26.	Workers Compensation Board	Presumed refusal	Supported; Resolved Informally; No Action Required
27.	Workers Compensation Board	Presumed refusal	Supported; Resolved Informally; No Action Required
28.	Workers Compensation Board	Presumed refusal	Supported; Resolved Informally; No Action Required
29.	Workers Compensation Board	Presumed refusal	Not Supported; Resolved Informally; No Action Required
30.	Workers Compensation Board	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required
31.	Workers Compensation Board	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required
32.	Workers Compensation Board	Objecting to extension	Not Supported; Report Dismissing Complaint; No Action Required
33.	Workers Compensation Board	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
34.	Workers Compensation Board	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
35.	Workers Compensation Board	Refused access	Supported; Resolved Informally; No Action Required
36.	Workers Compensation Board	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
37.	Workers Compensation Board	Refused access	Partially Supported; Resolved Informally; No Action Required

No.	Department/Other	Complaint	FDR (Finding; Disposition; Result)
38.	Workers Compensation Board	Refused access	Supported; Resolved Informally; No Action Required
39.	Workers Compensation Board	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
40.	Workers Compensation Board	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
41.	Workers Compensation Board	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
42.	Workers Compensation Board	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
43.	Workers Compensation Board	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
44.	Workers Compensation Board	Refused access	Pending
45.	Workers Compensation Board	Refused access	Pending
46.	Workers Compensation Board	Refused access	Pending
47.	Workers Compensation Board	Refused access	Pending
48.	Workers Compensation Board	Refused access	Pending

Of the forty-eight complaints received during 1990 thirty-six were concluded and twelve were carried over to the next reporting year.

Complaints Attributed to Each Department, Agency or Category

Rank	Department, Agency or Category	Number of Complaints	Percentage of Total (Approximately)
1	Workers Compensation Board	23	47.92%
2	Ministry of Justice	7	14.58%
3	Health	3	6.25%
	Manitoba Public Insurance Corporation	3	6.25%
	Executive Council	3	6.25%
4	Highways and Transportation	2	4.17%
	Industry, Trade and Tourism	2	4.17%
5	Labour	1	2.08%
	Corporations and Extra Departmental	1	2.08%
	Rural Development	1	2.08%
	Finance	1	2.08%
	Family Services	1	2.08%
	TOTAL	48	100.00%

It may be interesting to note that the largest number of complaints was recorded against the Workers Compensation Board. However, to put things in perspective it should be noted that the twenty-three complaints against the Board were all filed by one individual, and they all related to information being sought in connection with one particular problem.

Sources of Complaints

Moosehorn	1
Ste. Anne	1
Steinbach	1
Stonewall	1
Winnipeg	39
Subtotal	43
Out of Province	
Ontario	4
Texas	1
Subtotal	5
Total	48

Court Case

The Freedom of Information Act provides essentially that every person, upon application, has a right of access to any record in the custody or under the control of a department or agency including any record which discloses information about the applicant. This right of access is subject to various provisions of the Act which exempt from release various categories of information. Consequently applicants for access to information under The Freedom of Information Act will not always be granted access to the information they seek.

The Manitoba Freedom of Information Act provides a two step review process for individuals refused access to information for which they have applied. Firstly, the applicant may lodge with the Ombudsman a complaint concerning the refusal of access whereupon the Ombudsman will thoroughly investigate the matter. The Ombudsman's investigation may not always resolve the matter for the applicant. It may be that the Ombudsman has investigated and recommended partial or total access and the department involved maintains its original positions of refusal or grants partial access while the applicant wishes access to more than what is being granted or recommended. Another scenario may be that the Ombudsman has investigated and is of the opinion that under the Act access can not be granted and hence makes no recommendation in favour of the applicant. In cases where there is a continued refusal of access after the Ombudsman has investigated and the applicant wishes to pursue the matter further, the Act provides for an appeal to the court which the applicant originates by filing a notice of motion within thirty days of receiving the Ombudsman's report.

Since The Freedom of Information Act has come into force there has only been one court case, the judgement on this case being delivered October 9, 1990. This court case relates to a complaint which I reported in my 1988 Freedom of Information Annual Report. In this current report I am presenting again my summary of the case in question, following which is presented the transcript of the court decision relevant to this case.

Case Summary

An Unreasonable Invasion of Privacy

88-260-0001-F3 **Manitoba Government Services**

Complaint: *Refusal of Access*
Finding: *Partially Supported*
Disposition: *Report, With Recommendation*
Result: *Remedial Action*

A former government department employee filed a complaint concerning the refusal of the department to grant him access to all the records he had requested. Specifically, the applicant had requested that he have access to all records relating to his employment including interdepartmental memos, letters, documentation concerning disciplinary actions, suspensions, and his dismissal. In particular, he was seeking records concerning an incident involving third parties which he felt ultimately led to the termination of his employment. The department had responded to the applicant's request by granting partial access, exempting certain information under Subsection 48(1) of the Act which deals with third party reports. The applicant felt that this information should not have been severed from the file. He believed the information was instrumental in bringing about his dismissal and that he had the right to view it even though it may have come from third parties. He feared that the information could affect future employment consideration and he had the right to dispute any of the entries on his file.

This complaint was very carefully and thoroughly investigated. The complete file containing the records in question was examined and it was determined that there had been ten pieces of documentation which had been severed from the file and to which the applicant had not been granted access. We studied this information very carefully in light of The Freedom of Information Act and the exemptions contained therein. Both the complainant and the department were given an opportunity, by way of an interview, to make representation respecting the complaint.

After a complete review of the complaint, I formally recommended to the department that the complainant be granted access to six of the ten documents to which access had been refused. It was my opinion that the other four documents should remain exempt, one under Subsection 48(1) of the Act, dealing with third party reports and the remaining three documents under Subsection 41(1) which is an exemption which the department had not used, but is one which I felt to be very relevant as it deals with the protection of the personal privacy of a third party. It was my opinion that release of the information in the three documents would constitute an unreasonable invasion of the privacy of third parties. My findings and recommendation was conveyed to the department and the complainant. The department agreed with my recommendation and our complainant was granted access to the documents recommended. Regarding the refusal of access on the remaining documents, I advised the former employee of his right of appeal to the court and closed our file

File No.: 89.01.35277
(Winnipeg Centre)

COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:

BARRY MARCHAND,

Plaintiff.

-and-

THE MINISTER OF GOVERNMENT SERVICES OF MANITOBA,

Defendant.

OLIPHANT, J.

The Plaintiff appeared in person.

For the Defendant:
Ms. Deborah L. Carlson.

Judgment Delivered:

October 9, 1990

OVERVIEW

This is an appeal pursuant to "The Freedom of Information Act", S.M. 1985-86 c. 6-Cap. F175 ("the Act").

The applicant, Barry Marchand, a former employee of the Government of Manitoba seeks access to certain documents in his personnel file. To this point in time, the Government of Manitoba has denied him access, claiming four documents fall within certain exemption sections of the Act.

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THE ISSUES

1. What is the scope of the powers given to the Court on an appeal pursuant to the Act?

2. Do the documents in question, or any of them, come within the definition of "record" as that word is defined by the Act?

3. Do the documents in question, or any of them, fall within the exemption provisions of the Act?

THE FACTS

On June 6, 1983, Mr. Marchand became employed as a security guard with The Department of Government Services of the Province of Manitoba. The then Minister of Government Services was one John Plohman. Mr. Marchand was a probationary employee during the initial stages of his employment, the period of probation being six months.

On the evening of September 15, 1983, Mr. Marchand was on duty at the Legislative Building, working the evening shift, which was 4:00 PM to 12:00 AM.

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According to Mr. Marchand, he had occasion to check the office of Mr. Plohman after seeing a light shining beneath the door to the office.

Upon looking into the office, Mr. Marchand alleges he observed Mr. Plohman in what can only be described as a compromising position with his secretary.

At 3:30 PM on October 14, 1983, Mr. Marchand was served with a letter terminating his employment. The termination was effective that very day at 4:00 PM. In the letter, the writer gave various reasons to Mr. Marchand for the termination of his employment. None of the reasons given had anything to do with the Plohman incident.

Mr. Marchand did not believe the reasons given to him for the termination of his employment, nor does he now believe those reasons. Mr. Marchand remains firmly convinced that he was dismissed for reporting what he allegedly saw during the evening of September 15, 1983 in Mr. Plohman's office.

In any event, Mr. Marchand appealed the termination

of his employment to the Civil Service Commission of Manitoba. After a hearing which lasted four days, the Civil Service Commission dismissed Mr. Marchand's appeal from the termination of his employment.

On September 30, 1988, the Act was proclaimed in force. That same day, The Department of Government Services received an Application for Access under the Act from Mr. Marchand. In essence, Mr. Marchand sought access to any and all records pertaining to his employment and to the termination of his employment.

Upon receiving the application, Sally Linda Walker, who is the executive director of the Administration Division of The Department of Government Services caused all documents relating to Mr. Marchand's application to be collected.

On October 25, 1988, Ms. Walker advised Mr. Marchand that she was granting him partial access to the documents relating to his application. The documents to which Mr. Marchand was granted access by Ms. Walker consisted of 124 pages.

Ms. Walker denied Mr. Marchand access to ten documents on the basis that they were reports which had been prepared by various third parties; that they were reports about the applicant and that they had been prepared prior to September 30, 1988.

Mr. Marchand then filed a complaint with the Ombudsman, pursuant to s. 14 of the Act.

On December 13, 1988, following his investigation of the complaint of Mr. Marchand, the Ombudsman provided his report to Mr. Marchand and to The Department of Government Services.

On December 19, 1988, Mr. Marchand was granted access to six further documents.

The remaining four documents, to which Mr. Marchand has been denied access, consist of three reports which The Department of Government Services says are reports prepared by third parties about the applicant. Those responsible for preparing the reports object to the applicant's having access to their reports. The fourth document to which Mr. Marchand

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was denied access is said to be a report about him consisting of ten pages. This document is neither dated nor signed.

On March 14, 1989, DeGraves, J. ordered that the four documents in question "...shall be sealed and kept in the custody of the court in a place to which neither the Applicant nor the general public has access, and shall not be opened except by the judge hearing this motion."

The documents in question were provided to me in the sealed envelope and I have read all of them.

RELEVANT STATUTE LAW

The Freedom of Information Act, supra.

1. "record" means any kind of recorded information, regardless of physical form or characteristics, and without restricting the generality of the foregoing includes

(a) any correspondence, memorandum, file, register, index, book, plan, map, drawing, diagram, photograph, film, painting, pictorial or graphic work, microform, sound recording, video tape, and machine-readable record.

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(b) any manual, handbook or other guideline used by the officers or employees of a department to interpret an enactment or to administer a departmental program or activity which affects the public,

(c) where the form of a record is such that the record cannot be understood without explanation, a transcript of the explanation of the record,

(d) a copy of a record, and

(e) a part of a record, ("document")

3. Subject to this Act, every person has, upon application, a right of access to any record in the custody or under the control of a department, including any record which discloses information about the applicant.

34. In any appeal under this Act, the burden of proof is on the head of the department to establish that the applicant has no right of access to the record under this Act.

35(1) Upon completion of the appeal hearing, the court may, subject to this section,

(a) order the head of the department to give the applicant access to the record, or refuse to make the order, or

(b) make such other order as the court deems appropriate.

35(2) Where the court finds that the record in question falls within an exemption, the court shall not order the head to give the applicant access

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to the record, regardless of whether the exemption in question requires or merely authorizes the head to refuse to give the applicant access to the record.

35(3) Where the court is of the opinion that the appeal has raised an important new principle concerning the operation of this Act, the court shall order that costs be awarded to the applicant in any event of the cause.

37 Notwithstanding any other provision of this Act, where the court finds that a record contains exempt information, the court shall order the head of the department to give the applicant access to all the information in the record which is not exempt and which can reasonably be severed from the exempt information.

41(1)(c) Subject to subsections (3) and (5), the head of a department shall refuse to give access to any record the disclosure of which would constitute an unreasonable invasion of the privacy of a third party, including but not restricted to a record which discloses the identity of a third party who has supplied information in confidence to a department for any purpose related to the administration or enforcement of an enactment.

41(3) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where

(a) the third party consents to access being given; or

(b) the record is publicly available; or

(c) the third party is an individual who has

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been dead for more than 10 years.

48(1) Subject to subsection (2), the head of a department may refuse to give access to any record which was made prior to the coming into force of this section and which discloses a report prepared, or an opinion expressed, about the applicant by a third party, including a third party who is or was an officer or employee of a department or a member of the staff of a minister.

48(2) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where the third party consents to access being given.

CONCLUSIONS

1. WHAT IS THE SCOPE OF THE POWERS GIVEN TO THE COURT ON AN APPEAL PURSUANT TO THE ACT?

While the Act enables the Court to order that access to a record be given to an applicant, no such order shall be made if the Court is satisfied the record falls within an exemption.

The onus of satisfying the Court that a record falls within an exemption lies upon the respondent, that is, the

head of the governmental department involved in the appeal before the Court.

In my view, the applicable standard of proof is the normal civil standard of proof.

If, then, on a balance of probabilities, the respondent is able to prove the record in question falls within one or more of the exemption sections of the Act, the Court is disallowed by statute from ordering that the applicant be given access to such record.

I do not believe that an appeal under the Act can be equated with a review as provided for under the "Privacy Act", R.S.C. 1985, c. P-21.

On an appeal under the Act, the question for determination is simply one of whether access to a record can be denied because the record is within one or more of the exemption sections. The discretion exercised by the governmental official or officials in arriving at the decision not to grant access is, in my opinion, beyond the purview of the Court's scrutiny,

except as to an error being committed in determining that the record falls within an exemption.

Because of the differences in the wording of the Act and that of the "Privacy Act", supra, the decision of Strayer, J. in Ternette v. Solicitor General of Canada, [1984] 2 F.C. 486 (F.C.T.D.) is not, in my opinion, applicable here.

In Ternette, supra, Strayer, J. held that the provisions of the "Privacy Act", supra, were broad enough to allow for a review of the conduct of officials in refusing to provide an applicant access to the information sought.

However, it is clear, I think, that if a governmental official exercises his or her discretion in a manifestly unreasonable manner, or upon criteria so remote from that authorized by the legislation as to exceed the authority conferred by statute, the Court can intervene. See Re MacMillan Bloedel Ltd. and Appeal Board under the Forest Act et al (1984), 8 D.L.R. (4th) 33 (B.C.C.A. 33 at p. 45).

I hasten to say that here, there were no assertions

by the applicant of any such conduct on the part of Ms. Walker in the exercise of her discretion not to allow the applicant access to the four documents in question.

In terms of the scope of the Court's power on this particular appeal, the question arises whether the respondent is bound now by the reasons initially given to the applicant for denying him access to certain records.

It will be remembered that when the applicant's access to the records was initially denied, the respondent relied upon s. 48(1) of the Act.

Neither the record nor the evidence discloses any attempt by the respondent to also rely upon s. 41(1)(c) of the Act until May 30, 1989, several months after this appeal was launched by the applicant.

The question is "If I find that the respondent cannot rely upon s. 48(1), is the respondent able to rely upon s. 41(1)(c) so as to deny access to the applicant to the records in question?"

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A similar issue arose in Davidson v. Canada (Solicitor General), [1989] 2 F.C. 341 (Fed. C.A.). After enunciating various reasons for requiring the respondent in that case to be bound by the grounds originally relied upon for refusing access to certain records, MacGuigan, J.A. said, at p. 349:

> "All of these considerations persuade me of the Trial Judge's wisdom in holding that the institutional head was bound by the grounds originally stated in the notice of refusal, with no possibility of subsequent amendment.
>
> The only possible exception to the generality of this rule that appears to me is with respect to the mandatory grounds of exemption..."

Likewise, in Ternette, supra, Strayer, J. observed, at p. 497:

> "In my view it is fundamental to the exercise of all subsequent remedies by the applicant that the head be bound by the grounds he asserts in his notice of refusal."

The thrust of the Act is to allow citizens a right of access to any record in the custody or under the control of a department of the Government of Manitoba.

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The right of access is, of course, subject to the exemptions. The exemptions derogate from the thrust of the Act. They must be strictly interpreted and, to come within the scope of an exemption, the record must fall squarely within the ambit of the exempting section.

While the exemption provided for in s. 48(1) is permissive, the exemption set forth in s. 41(1)(c) is mandatory.

I conclude, therefore, that even though the respondent intially relied upon s. 48(1) of the Act to deny Mr. Marchand access to certain records, the respondent can now also rely upon the exemption provided for in s. 41(1)(c).

2. DO THE DOCUMENTS, OR ANY OF THEM, COME WITHIN THE DEFINITION OF "RECORD" AS THAT WORD IS DEFINED BY THE ACT?

The word "record" is broadly defined in s. 1 of the

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Act. Essentially, any recorded information is a record within the meaning assigned to that word by the Act.

There is no dispute that three of the four documents in question are records as defined by the Act.

The fourth document consists of ten pages of what appear to be notes. The pages are handwritten. They are neither signed nor dated. There are two different types of paper included in the ten pages. Six pages are yellow, 8½" x 11", and four pages are white, 8½" x 14". I am unable to discern whether all of the writing is by one person or by more than one person.

Included in the ten pages are many references to Mr. Marchand and to Mr. Plohman.

I am unable to accede to the submission of counsel for the respondent that the document is not intelligible.

I am of the view that the ten page document is a record as defined by the Act.

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3. DO THE DOCUMENTS IN QUESTION, OR ANY OF THEM FALL WITHIN THE EXEMPTION PROVISIONS OF THE ACT?

The respondent has refused the applicant access to four separate records. The respondent's justification for the refusal is based on ss. 41(1)(c) of the Act.

It is worthwhile to remember that, subject to the exemptions, every person has a right of access to any record in the custody or under the control of a department of the Government of Manitoba. The Act recognizes the competing interests that exist in terms of the government's providing access to information within its control.

First of all there is the public interest. This can be translated as meaning the interest that the general public has in knowing what information the government has amassed on a variety of subjects. More importantly perhaps is the right of an individual member of the public to be aware of information the government has collected regarding that

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individual.

One of the interests which competes with the public's right to know is the interest of a person who supplies information to the government on a confidential basis. It is submitted by counsel for the respondent that such a person is entitled to the reasonable expectation that the confidentiality of the information will be respected. Otherwise, of course, persons will be naturally reluctant to provide the government with such information.

Another interest which competes with public's right to know is the right of privacy to which individual members of the public are entitled.

It is because of these competing interests that the Act contains exemptions which allow for the denying of access to certain records. In some situations, the exemption is mandatory, for example, that provided for in s. 41(1)(c). In others, the denial of access is left to the discretion of the head of the government department involved in the application for access. See, for instance, s. 48.

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The importance placed by the legislators on the right of the public to have access to government records is indicated, I think by the fact that the head of the department bears the onus of establishing that the applicant has no right of access. See s. 34 of the Act.

The sections in the Act providing for exemptions must be strictly interpreted. If access to a record is to be denied, the head of the department, in my view, must demonstrate that the record in question comes squarely within the ambit of one of the exempting sections of the Act.

What, then, is the situation here?

To refuse access to a record under s. 41(1)(c) of the Act, the head of the department must establish that disclosure of the record in question would constitute an unreasonable invasion of the privacy of a third party. If the third party whose privacy would be invaded, unreasonably, is someone who has supplied information to the department in confidence, the head of the department must be establish that the information

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was supplied for a purpose related to the administration or enforcement of an enactment.

Having read the four records in question, I remain to be convinced that any of them invades unreasonably the privacy of a third party. So far as the authors of the records are concerned, even if the information was supplied in confidence, the respondent has, in my opinion, failed to establish the information was supplied for a purpose related to the administration or enforcement of an enactment.

To justify refusing access under s. 48(1) of the Act, the head of the department must establish that the record was made prior to September 30, 1988 and that the record discloses a report prepared, or an opinion expressed, about the applicant by a third party.

Here, I am satisfied that the records were made prior to September 30, 1988. However, I am not satisified that any of the four records discloses a report about the applicant. Three of the four records are reports on incidents observed by the authors. While these reports certainly contain references

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to Mr. Marchand, they are not, in my view, about him. They are about the incidents observed.

The fourth record is the document consisting of ten handwritten pages of notes. These notes do not constitute a report about Mr. Marchand nor do they express any opinion about him. The notes are not exempt from disclosure.

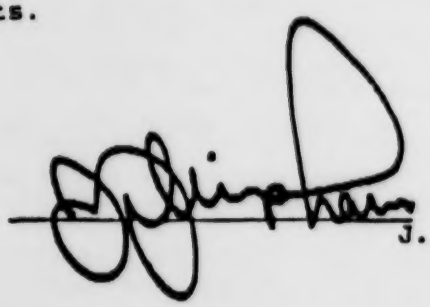
With one exception, none of the other three records discloses any opinion expressed about Mr. Marchand. An opinion is expressed about Mr. Marchand in the document authored by Chris Svensson and dated September 23, 1983.

The respondent, who is the head of the deparment, is to give to Mr. Marchand access to all of the information in the four records in question with the exception of the whole of the last paragraph of the record dated September 23, 1983, prepared by Chris Svensson.

That one paragraph comes within the exemption provided for in s. 48(1)(c) and it can be severed. I leave the method

of severance to the head of the department.

The applicant is entitled to costs which shall, in the circumstances, be limited to disbursements.



J.

Does the Premier Have the Records?

90-235-0001-F3 **Executive Council**

Complaint: *Refused Access*
Finding: *Not Supported*
Disposition: *Report Dismissing Complaint*
Result: *No Action Required*

In this case an individual filed, on January 18, 1990, a formal complaint under The Freedom of Information Act in which he complained that Executive Council, in its response to his December 6, 1989 application for access, had failed to supply all the information requested. After filing his complaint, he submitted, to the Premier's Office, further requests for information and asked our office to put his complaint on hold until March 1, 1990.

On March 1, 1990, when our office checked with the complainant he indicated we should proceed to investigate his complaint.

To summarize, under date of December 6, 1989 this applicant had prepared a formal application for access form addressed to The Honourable Gary Filmon and on that form had stated the following:

> *"I am requesting a copy of the Premier's files, including all notes, memos, minutes, deliberations, decisions, orders, records, etc., dealing with my complaints and concerns with the Workers Compensation Board's handling and processing of my claim... and my employer's failure to report workplace accidents in accordance with Section 18 (1) of the Act and the Board's failure to enforce Section 18(4) of the Act."*

The application for access was received on December 7, 1989 and responded to by a Freedom of Information Access Officer for Executive Council on December 21, 1989. At that time the Access Officer advised that access was granted to the records requested and that the applicant could view the records personally in the offices of Executive Council or, alternatively, receive copies of the records. On January 16, 1990 the applicant paid the appropriate fees for photocopying charges and, in correspondence dated January 17, 1990, the Access Coordinator for Executive Council sent the applicant copies of the records requested.

It was the applicant's opinion that he did not receive copies of all information on file.

To support his opinion he indicated that he had sent a letter dated September 14, 1988 to the Premier and that, when he met with a Special Assistant to the Premier on one occasion, he saw her make certain marks on the letter — in particular a circle around the last paragraph and also a circle around one of the names in the list of parties shown copied at the bottom of the letter.

Although, in response to his Application for Access, the applicant received a copy of his September 14, 1988 letter to the Premier, he did not receive a copy of that particular letter with the markings which he felt were inscribed thereon. Accordingly, he felt he had not received all information from the Premier's files.

Our investigation of this complaint involved discussions with appropriate personnel at the Premier's Office, including the Special Assistant; a review of the relevant file material at the Premier's Office; consideration of the provisions of The Freedom of Information Act; and discussions with the complainant concerning this matter.

While we understood the complainant's position to be that he saw the Premier's Assistant encircle, in ink, certain portions of his September 14, 1988 letter to the Premier, our review of the file material available did not reveal any letter with such markings. The original September 14, 1988 letter received by the Premier from the complainant was shown to our Investigator and it had no markings on it. Our Investigator checked all other items in the Premier's file and did not see any other copies of this letter.

When the Premier's Assistant was presented with the complainant's concerns, she indicated she remembered the complainant quite clearly but did not recall writing a circle on a letter in his presence, although she allowed that that was not to say it may not have happened. However, she made it clear that, if she had done so, this would not have been on the original document as she would never write on an original. The Premier's Assistant explained that sometimes original materials will be copied if it is known that the person who wrote them is coming into the office or if there is work to do with respect to the document. However, she maintained one would never work from the original and the original is always placed on file. The Assistant further indicated that she sometimes takes her own working notes and if, after she is finished with them, they have "no relevance", she will throw them out.

In light of the information obtained, it appeared that possibly the Premier's Assistant my have had a copy of the complainant's September 14, 1988 letter to the Premier present at the time she spoke with him, and possibly she may have made some notations on that letter. However, it also appeared that, if so, such notations, if any, would not have been made on the original letter, as our Investigator viewed the original which was on file. It also appeared that any working notes which the Premier's Assistant may have had at the time of the complainant's visit no longer existed at the time of his application for information under The Freedom of Information Act.

The question of whether working notes and copies of original letters must be kept on file is a separate issue and one which it was not necessary to address in order to conclude my investigation of this complaint. The simple fact is that if a record does not exist (whether that record be an inscribed or annotated copy of an original letter, working notes, etc.,) at the time an application for access is made, obviously that record cannot be made available to the applicant.

From our investigation of this complaint, it appeared that, in response to the application for access, the Executive Counsel office had provided the applicant with access to all the information available and, accordingly, there was no need to make any recommendation on the complainant's behalf. He was advised that if he wished to pursue this matter further, he could in accordance with subsection 30(1) of the Act appeal to the Court of Queen's Bench by filing an Originating Notice of Motion within thirty (30) days of receiving my report.

The Records Do Not Exist

90-235-0003-F3 **Executive Council**

Complaint: *Refused Access*
Finding: *Not Supported*
Disposition: *Report Dismissing Complaint*
Result: *No Action Required*

Sometimes individuals who have had a lot of dealings with government departments, agencies, or institutions may feel that there is a lot of information on file concerning them, but they may not know what information is on file nor with what department information may reside. The Freedom of Information Act does provide that "Subject to this Act, every person has, upon application, a right of access to any record in the custody or under the control of a department, including any record which discloses information about the applicant." In keeping with that principle individuals will often make very general applications to various departments in an effort to obtain access to any information which may be on file concerning them.

This particular case is an example of an individual attempting to locate and have access to any and all information which might be on file concerning him.

By application dated September 5, 1989, the applicant requested the following:

> *"I would like access to and/or copies of any and all information correspondence and any other records of concern to me or concerning me on file in the Executive Council records as per the attached personal, businesses and other identification & change of name, addresses and occupations, etc... "*

By letter dated October 5, 1989 the Access Officer for Executive Council, responded to the application advising that Executive Council did not have the records requested.

It was not until November 29, 1990 the applicant filed with our office a formal complaint (dated November 29, 1989) indicating that access to all or part of the record for which he applied had been refused. On his complaint form, he stated "I feel records must exist in their office."

Further to receiving the complaint an Investigator with my office spoke to the Access Coordinator for Executive Council about the matter. My Investigator was advised that upon receipt of the application for access, the Access Coordinator sought to locate any records concerning the applicant in the custody or under the control of Executive Council. The Access Coordinator advised that she was unable to locate any documents whatsoever in Executive Council's files. This was apparently the basis for the Access Officer's October 5, 1989 response to the applicant that Executive Council did not have the records requested.

I note that clause 6(2)(a) of The Freedom of Information Act provides:

> ***"Contents of refusal.***
> ***6(2) Where the head refuses to give the applicant access to the record, the notice... shall state the right of the applicant to file a complaint with the Ombudsman about the refusal to give aocess, and the notice shall further state***
>
> > ***(a) in the case of a record which the department claims does not exist or cannot be located, that the record does not exist or cannot be located;"***

This was the information provided to the applicant by the Access Officer. Based on our review, it would appear that Executive Council did not have the records requested. This being the case, there was no recommendation the Ombudsman could make in this matter. Our complainant was so advised and informed that if he still felt that there remained a refusal of access issue that he wished to pursue further, he could, in accordance with subsection 30(1) of The Freedom of Information Act, appeal to the Court of Queen's Bench by filing an Originating Notice of Motion within 30 days of receiving my report. Our file was then closed.

Economic Interest of Manitoba

90-250-0001-F3 **Manitoba Finance**

Complaint: *Refused Access*
Finding: *Not Supported*
Disposition: *Report Dismissing Complaint*
Result: *No Action Required*

In this particular case the applicant seeking information submitted (under date of November 24, 1989) to Manitoba Data Services several requests as follows:

> *"Appl One — All data given to bidders to buy Manitoba Data Services including request for proposals and guidelines for confidentiality.*
>
> *Appl Two — All submitted offers to buy Manitoba Data Services.*
>
> *Appl Three — Evaluation of these bids, their ranking and short listing.*
>
> *Appl Four — Proposed legal reassurances to be built into any agreements with buyer or buyer's use of data with respect to confidentiality.*
>
> *Appl Five — Any cost-benefit studies on selling/retaining MDS; its actual economic value and assets.*
>
> *Appl Six — All data previously released under FOI. Perhaps you could first provide a list/log of subject matter released."*

On December 11, 1989 Manitoba Data Services responded to the application for access, indicating that it had no access to any of the records that the applicant applied to see in his Applications 1 to 5. Manitoba Data Services' Access Officer informed him that the entire divestiture process was being performed by a special committee working with the Minister of Finance and, accordingly, his application was forwarded to the Minister of Finance since his office was most likely to have custody or control of the records for which the applicant applied. Regarding Application No. 6, the Access Officer attached to his letter a list of the subject matter previously released under The Freedom of Information Act.

By letter dated December 18, 1989, the Access Coordinator for Manitoba Finance informed the applicant that his access request had been reviewed and access was being denied as the information being sought was exempt from access under section 43(c) of The Freedom of Information Act which reads as follows:

> *"43 The head of a department may refuse to give access to any record*
>
> *(c) the disclosure of which could reasonably be expected to prejudice the competitive position of a department or the government, or to interfere with contractual or other negotiations of a department or the government;".*

As a result of the refusal by Manitoba Finance, the applicant complained to our office, indicating on the complaint form:

> *"(1) There are 5 different applications and only 1 response.*
>
> *(2) Surely Sec 43 is not so broad as to deny all data in 5 different applications.*
>
> *(3) Sec 43 requires proof of injury - whereas the proof much of the data sought is routinely given out as factual data federally.*
>
> *(4) Hiding information defeats and demeans the process of possible divestiture of MDS."*

Our investigation of this complaint involved discussions and meetings with appropriate personnel at Manitoba Finance, and in particular the Secretary to Treasury Board; a review of the files and material relevant to the access request; consideration of the relevant sections of The Freedom of Information Act; and discussion with the applicant concerning our findings.

Regrettably it took our office a long time to complete its investigation of this complaint. However, this was unavoidable due to the heavy workload in our office and, also, due to the fact that we ran into some difficulties arranging with Manitoba Finance for a review of the relevant file material. Those matters, however, were sorted out and we trust we will not encounter such difficulties in the future when arranging to review documentation in relation to a complaint under The Freedom of Information Act.

Eventually we were able to report to our complainant that our office did thoroughly review his complaint. From our review, I was satisfied that, at the time access was requested, the Department was correct in refusing access under subsections 43(c) because at that time the Government was in the process of negotiations concerning the divestiture of Manitoba Data Services. Whereas, Manitoba Data Services had subsequently been sold, we did explore during the course of investigating the complaint whether the information requested would be available to the public. We were advised, however, that all the material related to the divestiture of MDS, including the negotiations and the recommended sale, had been prepared for consideration of Cabinet and, hence, would be exempt under subsection 38(1) of The Freedom of Information Act. It was indicated this material would remain exempt even though Manitoba Data Services had been sold unless, of course, Cabinet consented to access being given. We were advised that Cabinet did not intend to consent to access to these files. Our office reviewed all the Cabinet file material relevant to the application for access and we were satisfied the information we reviewed did fall under subsections 38(1) and 38(2) of The Freedom of Information Act which reads as follows:

> ***"Cabinet confidences.***
> ***38(1)*** *Subject to subsection (2), the head of a department shall refuse to give access to any record which discloses a confidence of the Cabinet, including but not restricted to a record which discloses*
>
> *(a) an agenda prepared for a Cabinet meeting; or*
>
> *(b) policy analysis or similar briefing material prepared for consideration by the Cabinet; or*
>
> *(c) a proposal or recommendation prepared, or reviewed and approved, by a minister for presentation to the Cabinet; or*
>
> *(d) a communication or discussion between ministers on a matter relating to the making of a government decision or the formulation of government policy.*
>
> ***Right of access preserved.***
> *38(2) Subject to the other exemptions in this Act, the head of a department shall give access to a record which discloses a confidence of the Cabinet where*
>
> *(a) the record is more than 30 years old; or*
>
> *(b) the Cabinet for which, or in respect of which, the record has been prepared consents to access being given."*

As a result of our investigation of this complaint, I was satisfied that Manitoba Finance responded to the application for access in accordance with The Freedom of Information Act and I was therefore not in a position to make any recommendation. Our complainant was advised accordingly, and informed as well of his right to appeal the refusal of access to the Court.

The investigation of this case did raise some important issues regarding the processing of applications for access by departments and also regarding the investigation of complaints by the Ombudsman. Before concluding my file on this case I presented my concerns to the Minister of Finance with the following letter:

June 14, 1990

The Honourable Clayton Manness
Minister of Finance
103 Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Mr. Manness:

Please find enclosed, for your information, copies of correspondence concerning a complaint under The Freedom of Information Act from Mr. . The complaint involved Manitoba Finance and resulted from a refusal of access in response to Mr. 's application for access to information concerning Manitoba Data Services.

You will note from the enclosed correspondence that we have completed our investigation of Mr. 's complaint and have reported to him the outcome of our review. Nonetheless, there are a couple of issues which emerged from this complaint which I feel should be brought to your attention in order that similar problems may be avoided in the future.

The first issue which became very clear early in our investigation is that although Mr. had been refused by the Access Officer, access to the information requested relating to the sale of Manitoba Data Services, the Access Officer advised us that neither he nor the Access Coordinator had actually seen the documentation concerning which he had to make a decision regarding access. I find this to be a highly irregular procedure and possibly not in keeping with The Freedom of Information Act.

It would seem to me that an Access Officer, charged with the responsibility of determining whether or not access to information should be granted, would have to see a record before determining that the record is exempt under the Act.

Under The Freedom of Information Act, as you are aware, the head of a department is defined as follows:

> *"'head' or 'head of a department' means*
>
> *(a) in the case of an unincorporated Crown agency, the minister charged with the administration of the Act under which the agency is established,*
>
> *(b) in the case of an incorporated Crown agency, the chief executive officer of the agency, and*
>
> *(c) in all other cases, the minister charged with the administration of the department; ('responsible' ou 'responsible d'un ministere')"*

As you are also aware under The Freedom of Information Act it is the head of the department that is responsible for responding to applications for access to information and also for responding to the Ombudsman's investigation of complaints concerning access applications. As we know, the head of a department may delegate these responsibilities in writing to Access Officers whose actions then for the purposes of the Act are conclusively deemed to be actions of the head of the department. The relevant subsections of The Freedom of Information Act are subsection 57(1) and 57(2) which reads as follows:

> ***"Delegation to access officers.***
> ***57(1)*** *The head of a department may by written authorization designate one or more officers or employees of the department to be access officers for the purpose of exercising or performing such powers, duties and functions of the head under this Act as the head may specify in the authorization.*
>
> ***Effect of delegation.***
> ***57(2)*** *Any action or decision of an access officer acting within the scope of the authorization referred to in subsection (1) shall, for purposes of this Act, be conclusively deemed to be the action or decision of the head."*

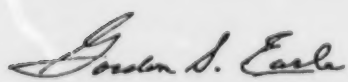
In other words, when an Access Officer, in response to an application for access, refuses to grant access then that refusal is deemed to be an action of the head of the department, which in most cases would be the Minister responsible for the Department. How can an Access Officer logically determine on behalf of his or her Minister that information requested is exempted under the Act if that Access Officer has not in fact examined the information being sought? Also, how can the Access Officer determine what sections of The Freedom of Information Act are relevant in exempting the information without being privy to that information. Furthermore, when the Ombudsman receives a complaint about the refusal of access, the Ombudsman deals directly with the Access Officer who has denied access on behalf of the head of the department. How can the Access Officer respond properly to the Ombudsman and justify or explain the Department's decision to refuse access if the Access Officer does not in fact know what information he or she is talking about?

It would seem to me that when a Minister responsible for a Department delegates his/her responsibility under The Freedom of Information to an Access Officer that Minister must have trust in the Access Officer's capability to maintain confidentiality with respect to the information concerning which that Access Officer must make decisions, and it would seem to me that regardless of the nature of the information the Access Officer must be allowed access to that information in order to make a properly informed decision concerning the applicant's request for information. If, for whatever reasons, a Minister does not wish to, or is unable to, delegate full responsibility for such decision making to Access Officers, then the written delegation of authority naming the Access Officers should specify this, and in such cases the Minister himself/herself would have to handle and respond directly to certain applications for access as well as respond himself/herself directly to the Ombudsman when complaints are being investigated under The Freedom of Information Act. I respectfully draw this matter to your attention for your consideration and for clarification with respect to the process in place within your Department for the handling of access to information applications and/or complaints.

The second issue which emerged during the investigation of Mr. 's complaint was the Ombudsman's right to have immediate access to and examine all data relevant to a Freedom of Information complaint. That matter is outlined in my Deputy's March 26, 1990 correspondence to Mr. Michael Bessy, Secretary to Treasury Board. I am pleased to say that we were able eventually to resolve the problem in this particular case and I am simply drawing it to your attention so that if there is any confusion within your Department concerning the Ombudsman's role under The Freedom of Information Act you may clarify matters for your officials so that we do not run into similar problems in the future.

I thank you for any assistance which you may be able to give and if I can be of any help in clarifying the role of the Ombudsman under The Freedom of Information Act please do not hesitate to get in touch with me.

Yours very truly,



Gordon S. Earle
Ombudsman

Although I did not receive any response to this letter, I am pleased to note that I have not encountered any further problems with the Department similar to those pointed out in my correspondence.

Information Obtained in Confidence

90-280-0001-F3 **Manitoba Highways and Transportation**

Complaint: *Refused Access*
Finding: *Not Supported*
Disposition: *Report Dismissing Complaint*
Result: *No Action Required*

On November 8, 1989 a formal application was made to Manitoba Highways and Transportation for access under The Freedom of Information Act to a report forwarded to that department by a local police force. On November 29, 1989 Manitoba Highways and Transportation responded to the application, indicating that access was being denied as the report falls into a mandatory exemption category under subsection 45(1) of The Freedom of Information Act. That subsection reads as follows:

> ***"Information obtained in confidence.***
> ***45(1)*** *Subject to subsection (2), the head of a department shall refuse to give access to any record obtained in confidence from*
>
> *(a) the government of Canada or a department thereof, or*
>
> *(b) the government of any other province or a department thereof, or*
>
> *(c) a municipal or regional government, a school division or school district, or any other local authority established by or in accordance with an enactment of any province, or a department of any such local authority."*

The Department refused access to the report since the report was obtained in confidence from a local authority, namely, the police.

As a result of the refusal of access by Manitoba Highways and Transportation, the applicant filed a formal complaint with my office on March 13, 1990. The complaint was thoroughly investigated. Our office had meetings with the appropriate officials at Highways and Transportation, reviewed the Department's file and in particular the document which had been requested, considered the relevant sections of The Freedom of Information Act, and had discussions directly with the applicant.

From our review of this complaint, we were satisfied that the record in question was provided to the Department in confidence by the police and, therefore, could properly be exempted from release under subsection 45(1) of The Freedom of Information Act. We did note, however, that under The Freedom of Information Act a right of access is preserved in such cases whereby reports such as the one being sought could be released by the Department under certain circumstances as spelled out in subsection 45(2) of the Act which reads as follows:

> ***"Right of access preserved.***
> ***45(2)*** *Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where the government, local authority or department from which the record was obtained.*
>
> *(a) consents to the giving of access; or*
>
> *(b) makes the information public."*

During our investigation we checked with Manitoba Highways and Transportation to see if that Department had consulted with the police regarding consent to the giving of access to the record. It was confirmed that the Department had in fact checked with the police and consent was not given to the release of the report.

After a careful review of the complaint, I was of the opinion that Manitoba Highways and Transportation properly applied The Freedom of Information Act with respect to the application for access and I was, therefore, not in a position to make any recommendation. The complainant was advised accordingly and informed of his right to appeal the refusal of access to the Court of Queen's Bench.

Medical Records and Personal Privacy

90-270-0001-F3 **Manitoba Health**

Complaint: *Refused Access*
Finding: *Not Supported*
Disposition: *Report Dismissing Complaint*
Result: *No Action Required*

On January 24, 1990 our office received a complaint (dated January 18, 1990) under The Freedom of Information Act concerning an application to the Manitoba Health Services Commission for copies of ail 1989 Medical Review Committee orders.

Our review of this complaint indicated that, under date of November 27, 1989, the complainant applied formally to the Manitoba Health Services Commission for copies of all 1989 Medical Review Committee orders. On his formal application form he asked that the names of physicians in the order reports be provided.

By letter dated December 22, 1989 the Manitoba Health Services Commission's Access Officer advised that access was being granted in part to copies of all 1989 Medical Review Committee orders, and that information had been severed in accordance with subsection 41(1) of the Act which deals with the protection and personal privacy. Our investigation revealed there had been only one Medical Review Committee order issued during 1989 and our complainant had been provided with a copy of that document. However, severed from the information provided was the name of the doctor to whom the order pertained.

In the complaint to our office the complainant stated that the removal of the doctor's name is not in the public interest. He further stated that "patients are put in risk by this doctor's type of condemned practices. It is not just the case of quietly repaying monies."

Our investigation of this matter involved meeting with the appropriate officials at the Manitoba Health Services Commission, a review of the relevant Medical Review Committee order, and consideration of the pertinent sections of The Freedom of Information Act.

From my review of the relevant order of the Medical Review Committee, I did not see anything to substantiate the complainant's concern that patients were being put at risk. There was nothing in the Medical Review Committee order to indicate any dangerous medical practices exposing patients to risk. Rather, the Medical Review Committee order dealt with the issue of the physician departing from the pattern of medical practice established by the Committee concerning the number and types of services and referrals considered to be the norm for a given number of patients and a given period of time. In other words, this order dealt simply with the question of over-servicing and over-billing and the question of repayment. There did not appear to be anything in the order to indicate a concern of patients being at risk.

In any event, after a very careful review and consideration of this matter, I was satisfied the Manitoba Health Services Commission properly applied subsection 41(1) of The Freedom of Information Act in severing from the information provided to the applicant the name of the physician involved. It was my opinion that the release of such information would constitute an unreasonable invasion of the privacy of a third party, the doctor involved. Accordingly, I did not make any recommendation in this case and the complainant was advised of his right of appeal to the Court.

An Unreasonable Invasion of Privacy

90-270-0002-F3 **Manitoba Health**

Complaint: *Refused Access*
Finding: *Not Supported*
Disposition: *Report Dismissing Complaint*
Result: *No Action Required*

The Freedom of Information Act attempts to balance the right of access to information with the necessity to protect personal privacy. The following case is one which illustrates the necessity for those seeking information and those considering release of information to carefully consider those two principles.

On January 24, 1990 our office received a complaint (dated January 18, 1990) under The Freedom of Information Act concerning an application to the Manitoba Health Services Commission for access to the meeting minutes for 1989 of the Medical Review Committee.

Our review of this matter revealed that, under date of November 27, 1989, the applicant formally applied to the Manitoba Health Services Commission for "meeting minutes for 1989 of Medical Review Committee". The application was received by the Manitoba Health Services Commission on November 28, 1989 and by letter dated December 14, 1989, the applicant was advised by the Access Officer for the Commission, that partial access was being granted to the information requested. The applicant was informed that the meeting minutes were severed in accordance with subsection 41(1) of The Freedom of Information Act whereby it is mandatory that the head of a department refuse to give access to any record the disclosure of which would constitute an unreasonable invasion of the privacy of a third party. In this case the meeting minutes had been severed, taking out names and identifying information which would represent an unreasonable invasion into the privacy of third parties. The applicant was provided with copies of the severed 1989 meeting minutes of the Medical Review Committee. However, in the complaint to our office, he challenged the use of subsection 41(1) to sever these minutes, claiming that meeting minutes affect health care in Manitoba; and embarrassment, poor medical practices and inbred secrecy are hardly privacy protection grounds.

Our investigation of this matter involved meeting with the appropriate officials at the Manitoba Health Services Commission, a review of the relevant minutes of the Medical Review Committee meetings, and consideration of the pertinent sections of The Freedom of Information

Act. As well our Investigator discussed the matter with the complainant.

After very careful examination of this case, I was satisfied that the Manitoba Health Services Commission properly applied subsection 41(1) of The Freedom of Information Act in its severance of the copies of the minutes provided. It was my opinion that release of the information severed would constitute an unreasonable invasion of the privacy of third parties. Accordingly, I did not make any recommendation in this case and the complainant was advised that if he wished to pursue further the refusal of access, he could appeal to the Court of Queen's Bench by filing an Originating Notice of Motion within thirty (30) days of receiving my report.

Personal Privacy Must Be Protected

90-310-0001-F3 **Manitoba Industry, Trade and Tourism**

Complaint: *Refused Access*
Finding: *Not Supported*
Disposition: *Report Dismissing Complaint*
Result: *No Action Required*

On January 24, 1990 our office received a complaint that Manitoba Industry, Trade and Tourism had refused to release to the applicant's firm the name of the person or persons or companies that registered complaints to Travel Manitoba against the firm.

Our investigation of this complaint involved a meeting with the appropriate official at Manitoba Industry, Trade and Tourism, a review of relevant file material, consideration of the pertinent sections of The Freedom of Information Act, and also discussions with the complainant and her husband.

To summarize, our investigation revealed that, by letter dated December 8, 1989, our complainant's husband wrote to Manitoba Industry, Trade and Tourism requesting "the release of the name belonging to the person/persons or establishment/establishments who put in a complaint" against his firm. By letter dated December 13, 1989 the Access Officer for the Department responded to the applicant advising his request would have to be on a formal Freedom of Information application form. A blank Freedom of Information application form was enclosed with the Access Officer's letter.

On December 19, 1989, the applicant attended the office of the Departmental Access Coordinator for Manitoba Industry, Trade and Tourism and completed a Freedom of Information access application form. He indicated on the form that he wanted the Department to release to his firm the name of the person or persons or companies that had registered complaints to Travel Manitoba against the firm. By letter dated December 20, 1989 the Departmental Access Officer responded to the Application for Access, indicating that the request was being denied, based on Subsection 41(1)(c) of The Freedom of Information Act which states that a head of a department shall refuse access to any record which discloses: "the identity of a third party who has supplied information in confidence to a department for any purpose related to the administration or enforcement of an enactment."

After giving very careful consideration to the complaint, I was satisfied that Manitoba Industry, Trade and Tourism acted properly and within the terms of The Freedom of Information Act when denying access to the information requested. Under The Freedom of Information Act, there are provisions allowing for the protection of personal privacy. These provisions, found under Section 41 of the Act, exempt from disclosure any information which would constitute an unreasonable invasion of privacy of a third party including, among other things, information which would disclose the identity of a third party who has supplied information in confidence to a department for a purpose related to the administration or enforcement of an enactment. In this case the information provided to the Department by a third party was provided with respect to the enforcement of legislation concerning the firm's limited service outfitters licence.

The protection of personal privacy under The Freedom of Information Act is mandatory. In other words, departments or agencies of government do not have a choice as to whether they disclose information which would constitute an unreasonable invasion of the privacy of a third party because the Act is very clear in saying that the department **shall refuse** to give access to such information. The only instances where a department shall give access to such information is where:

(a) the third party consents to access being given; or

(b) the record is publicly available; or

(c) the third party is an individual who has been dead for more than 10 years.

In this case the Department made the appropriate checks and third party consent to access being given was not granted. Therefore, the Department properly denied access to the information requested under The Freedom of Information Act, and the Ombudsman was not in a

position to make any recommendation on behalf of the complainant. Our file was closed with the complainant being advised that if she wished to pursue the matter further, she could appeal the refusal of access to the Court of Queen's Bench by filing an Originating Notice of Motion within thirty (30) days of receiving my report.

Seeking Access from the Proper Source

90-110-0004-F3 **Manitoba Justice**

Complaint: *Refused Access*
Finding: *Not Supported*
Disposition: *Report Dismissing Complaint*
Result: *No Action Required*

Sometimes obtaining access to information may be a confusing process, not only for those seeking access, but also for those presented with applications for access. The following case illustrates some of the confusion that can arise particularly when information being sought may be information that is handled by more than one department or agency, and also when that information may be maintained at different levels of jurisdiction.

On February 20, 1990 our office received a formal complaint (dated February 15, 1990) under The Freedom of Information Act. On the formal complaint form prescribed for complaints under The Manitoba Freedom of Information Act, the complainant indicated that his complaint involved a detachment of the Royal Canadian Mounted Police. In his letter accompanying his complaint form, the complainant stated that he served a Sergeant of the RCMP with applications for access to information and that the Sergeant forwarded these to the Manitoba Justice Department for response.

Because the applications for access to information were made on the application for access form under the provincial Freedom of Information Act and because these applications were forwarded to Manitoba Justice and responded to by that Department, our office received and treated this formal complaint as a complaint against Manitoba Justice. However, it was my opinion that, because the RCMP is a federal police force, the applications for access to information from that detachment should have been made under The federal Access to Information Act and any complaint about refusal of access should have been filed with the federal Information Commissioner.

In any event, we did review the concerns expressed with respect to the response received from Manitoba Justice concerning the applications for access. In reviewing the complaint, we met with the appropriate officials at Manitoba Justice, reviewed relevant file material, and gave consideration to the pertinent sections of The Freedom of Information Act. As well, the Deputy Ombudsman discussed the concerns directly with the complainant.

Essentially, under date of January 9, 1990, the complainant had filed three separate applications for access forms with a Sergeant who was the Officer-in-Charge of the detachment of the Royal Canadian Mounted Police. These forms were forwarded to the Manager of Administrative Services for Manitoba Justice.

The applications for access were seeking the following information:

1. *"The file showing all arrests made when Breathalizer was on airforce base during time Aug 1, 79 - June 30/80*
   - *A. Driver's name.*
   - *B. Reading.*
   - *C. Driver's previous record."*
2. *"The Training and Service Manuals for a Breathalizer specifically 900A."*
3. *"The file showing all (name of constable) Breathalizer arrests since becoming a member of (name of detachment).*
   - *A. Name of charged person.*
   - *B. Reading of breathalizer.*
   - *C. Driver's previous record."*

By letter dated February 9, 1990 we note that Manitoba Justice responded to each of the applications, indicating what type of information the applicant would be entitled to receive pursuant to The Freedom of Information Act and what information would be exempt from release under subsection 41(1) of the Act which deals with the protection of personal privacy. The Access Officer, in his response also indicated that the Training and Service Manual which was requested was a publication that may be publicly available and gave the applicant an address to contact in that regard. As well the Access Officer clarified which records were no longer available at the Justice Department and also which records the applicant should be seeking under the federal Access to Information Act.

After carefully considering this matter, I was satisfied that the Access Officer had provided our complainant with proper information in response to the application for

access forms which had been received at his office. Accordingly, there was no need for the Ombudsman to make any recommendation in this case.

The complainant was advised that if he wished to take further steps concerning the information he was seeking, he could follow the suggestions already given to him, namely, checking the public court records directly, communicating further with the relevant company regarding the Breathalyzer publication, and pursuing the formal processes available to him under the federal Access to Information Act. As well, he was advised of the court process if he wished to pursue further any refusal of access by Manitoba Justice.

Protection of Personal Privacy

90-110-0005-F3 **Manitoba Justice**

Complaint: *Refused Access*
Finding: *Not Supported*
Disposition: *Report Dismissing Complaint*
Result: *No Action Required*

On May 22, 1990, our office received a formal complaint under The Freedom of Information Act, in which the complainant indicated that the office of the Attorney-General had refused access to a list of all currently licensed and active security guards in the Province of Manitoba. We note from the correspondence enclosed with the complaint that although the complainant had written to the office of the Attorney-General requesting this information and had received a response denying access, he had not applied for the information by way of the formal process under The Freedom of Information Act. Accordingly, I felt that I could not consider a formal complaint under The Freedom of Information Act until such time as the complainant had formally made application in accordance with the Act and received a response in that regard. He subsequently made a formal application to the Justice Department and received a response denying access to the information he was seeking.

On the formal application for access under The Freedom of Information Act, the applicant had requested:

> *"A list of all currently licensed and active security guards in the Province of Manitoba, including name, address, phone number, and employer. This list is administered under the Law Enforcement Services Division of the Department of Justice."*

The application for access was dated May 31, 1990 and under date of June 4, 1990, the Departmental Access Officer responded indicating that the information requested was exempt under subsection 41(1) (a) of The Freedom of Information Act which reads as follows:

> *"Protection of personal privacy.*
> *41(1) Subject to subsections (3) and (5), the head of a department shall refuse to give access to any record the disclosure of which would constitute an unreasonable invasion of the privacy of a third party, including but not restricted to a record which discloses*
>
> *(a) personal details of the educational, medical, criminal, employment or family history of the third party;..."*

Following the further formal complaint to our office dated June 6, 1990, we investigated this matter. Our investigation involved discussions and interviews with the Registrar of Security Guards, and the Access Officer for Manitoba Justice. As well, we reviewed the appropriate file material including the information to which access had been refused. Further, my Investigator had discussions with the complainant concerning his complaint and provided him with the opportunity to make further representations. After a careful review of this complaint, I was of the opinion that the records requested did contain sufficient personal details of third parties to warrant exemption from access, under subsection 41(1) of The Freedom of Information Act. It was my opinion that the Department properly applied the Act in its consideration of this access request and I did not feel I was in the position to make any recommendation. This information was communicated to the complainant by my Investigator, at which point the complainant advised that he did not wish to proceed further and that he had obtained 90% of what he wanted and hence there was no point in proceeding. He also expressed his view that the Department does at times release the kind of information he was seeking and that there is no consistency in the Department's actions in this regard. However, he indicated as well that he did not wish to pursue a complaint on that issue through our office.

In light of the fact that I was not in a position to make any recommendation concerning the denial of access in this case, and also in light of the fact the complainant did not wish to pursue any further concerns on this matter, I closed our file on this case. Our complainant was advised of his right to appeal to the court if he wished to pursue further the matter of refusal of access.

Reasons Must Be Given

90-110-0006-F1 **Manitoba Justice**

Complaint: *Presumed Refusal*
Finding: *Supported*
Disposition: *Resolved Informally*
Result: *No Action Required*

When a department fails to respond to an application for access within thirty days, or fails to respond after the expiry of an extension period then it is presumed that the Department has refused to give the applicant access to the record. In such a case written notice of the reasons for the refusal of access must be given.

In this particular case the complainant contacted our office indicating that his father had filed a Freedom of Information application with Manitoba Justice on April 21, 1990 and a written response to that application was not given. On July 23, 1990 the complainant (on behalf of his father) attended the office of the Access Officer for Manitoba Justice. At that time a copy of the April 21, 1990 application was taken and the father's name was struck off and replaced with the name and telephone numbers of the son. At the time of his complaint to our office, i.e. August 20, 1990 no written response had been received from the Department.

Upon receipt of this complaint, and in accordance with subsection 17(1) of The Freedom of Information Act, I wrote to Manitoba Justice requesting that the Department provide the complainant with written notice of the reasons for refusal to give access. Shortly thereafter the Access Officer for the Department wrote to the complainant. In that letter it was clarified that the complainant's application for access related in part to statements obtained from individuals by Conservation Officers and the Access Officer indicated that access to these statements would be denied pursuant to clause (c) of subsection 41(1) of The Freedom of Information Act, which reads as follows:

> *"—, the head of department shall refuse to give access to any record the disclosure of which could constitute an unreasonable invasion of privacy of a third party, including but not restricted to a record which discloses*
>
> *(a)* —
>
> *(b)* —
>
> *(c) the identity of a third party who has supplied information in confidence to a department for any purpose related to the administration or enforcement of an enactment."*

The giving of this information to the complainant resolved the question of the presumed refusal of access. It was now clear that access had been refused and the reason why.

The complainant was now in a position to pursue with my office a formal complaint concerning the refusal of access, if he to wished. However, that did not become necessary as approximately one month later, for reasons unknown to us, the Access Officer sent to our complainant the statements which were previously indicated as being exempt under subsection 41(1) of the Act. In the letter from the Access Officer to the complainant it was stated:

> *"If there is anything further you require from the records please let me know."*

Hence in this case everything turned out well with both the presumed refusal and the actual refusal of access being informally resolved. The complainant was satisfied with the response and our file was closed.

Law Enforcement and Legal Proceedings

90-320-0001-F3 **Manitoba Labour**

Complaint: *Refused Access*
Finding: *Not Supported*
Disposition: *Report Dismissing Complaint*
Result: *No Action Required*

Under date of April 23, 1990 our office received a formal complaint under The Freedom of Information Act against the Fire Commissioner's Office which is a part of the Manitoba Labour Department. In this case the complainant had applied in February 1990, to Manitoba Labour asking for a copy of the Fire Commissioner's report concerning a fire which had taken place at a home in a small Manitoba town in August 1989.

By letter dated March 5, 1990 and Access Officer for Manitoba Labour responded to the Application for Access advising that under subsection 40(1)(d) of The Freedom of Information Act access to the report of the Fire Commissioner was being denied, as release of the report could "be injurious to the conduct of existing or anticipated legal proceedings." Subsection 40(1) of the Act reads as follows:

"Law enforcement and legal proceedings.
40(1) The head of a department may refuse to give access to any record the disclosure of which could reasonably be expected

(a) to be injurious either to the enforcement of an enactment or to the conduct of an investigation under an enactment; or

(b) to facilitate the commission of an offence or to threaten the security of a correctional institution or other building, a computer or communications system, or any other property or system; or

(c) to violate solicitor-client privilege; or

(d) to be injurious to the conduct of existing or anticipated legal proceedings."

Upon receipt of the formal complaint, our investigation involved discussions and meetings with the appropriate personnel at Manitoba Labour, a review of the file at the Fire Commissioner's Office and consideration of the relevant subsections of The Freedom of Information Act. Also, my Investigator spoke directly with the complainant concerning this matter, providing the opportunity for any further representations respecting the complaint.

From our review of this complaint, I was satisfied that the report to which access was being sought was a report generated as a result of the Fire Commissioner conducting an inquiry under The Fires Prevention Act and that Manitoba Labour had the discretion under subsection 40(1) of The Freedom of Information Act to refuse to give access to that report. Accordingly, I was not in a position to make any recommendation in favour of the complainant.

I advised the complainant that if he wished to pursue this matter further under The Freedom of Information Act, he could appeal the refusal of access to the Court of Queen's Bench by filing an Originating Notice of Motion within thirty (30) days of receiving my report.

In Keeping with the Spirit and Letter of the Act?

90-350-0001-F3 **Manitoba Public Insurance Corporation**

Complaint: *Refused Access*
Finding: *Supported*
Disposition: *Report with Recommendation*
Result: *Insufficient Action*

and

90-350-0002-F3 **Manitoba Public Insurance Corporation**

Complaint: *Refused Access*
Finding: *Supported*
Disposition: *Report with Recommendation*
Result: *Insufficient Action*

and

90-350-0003-F3 **Manitoba Public Insurance Corporation**

Complaint: *Refused Access*
Finding: *Supported*
Disposition: *Report with Recommendation*
Result: *Insufficient Action*

The three cases cited above deal with similar requests for access to information, and all three cases illustrate, in my opinion, the importance of departments and agencies responding to access requests within the spirit and letter of The Freedom of Information Act.

In the first case (90-350-0001-F3) the applicant submitted to the Manitoba Public Insurance Corporation a formal application for access making reference to his autopac claim and requesting information from the claim file of the other party involved in the accident. He requested specifically autopac's damage report on the other party's vehicle including the form with a symbolic picture of a vehicle used by the autopac adjustor to designate where the damage was located. The applicant also requested the other party's original statement to autopac and any subsequent statements to autopac regarding the accident.

By letter dated January 18, 1990 the Corporation's Access Officer, responded to the application advising that access to the damage report concerning the third party's vehicle, as well as his statements to the Corporation with respect to the accident was being denied for the following reasons:

"(a) The damage report and the statements of the Third Party, if they exist at all, do not form part of the file pertaining to your claim file, but rather form part of the file pertaining to the claim of (name of third party).

(b) Even if the documents existed and did form a part of your claim file, they would be exempt pursuant to Sections 40(1)(c) and (d) of The Freedom of Information Act; and,

(c) The damage report and the statements of the Third Party if they exist at all, cannot be made public for any purpose whatsoever, except in an action or proceeding in Court to which the Corporation is a party, or with the written consent of the person making the statement (Section 24 of The Manitoba Public Insurance Corporation Act, C.C.S.M., Cap. P215)."

In reviewing this response I had some concern relating to the relevance that the Corporation seemed to be placing on whether the document was in the applicant's file or a third party's file. The Freedom of Information Act provides that every person, upon application, has a right to access to any record in the custody or control of a department. The location of the record is irrelevant in my opinion.

In addition, the Corporation's response did not state whether the record existed. The Freedom of Information Act provides that, if a record does not exist or cannot be located, the head shall give notice to the applicant that it does not exist or cannot be located. Further, under the Act, if a record does exist and can be located but the head refuses to give the applicant access to the record, the head shall give notice to the applicant of the specific provisions of the Act upon which the refusal is based.

The Corporation's response seemed to imply that the provisions of The Manitoba Public Insurance Corporation Act formed a basis for denial of the record requested. In my opinion section 65 of The Freedom of Information Act nullifies that argument. Section 65 reads:

> ***"Confidentiality provisions in other enactments.***
> ***65*** *Every provision in any other Act of the Legislature or any regulation thereunder which restricts or prohibits access by any person to any record in the custody or under the control of a department is subject to this Act, and applied only to the extent that it falls within the exemptions in this Act."*

As far as the Corporation's denial was concerned, the Corporation did not quote the contents of the clauses used to exempt the records. The particular clauses, used by the Corporation to deny access, read as follows:

> **"Law enforcement and legal proceedings.**
> ***40(1)*** *The head of a department may refuse to give access to any record the disclosure of which could reasonably be expected ...*
>
> *(c) to violate solicitor-client privilege; or*
>
> *(d) to be injurious to the conduct of existing or anticipated legal proceedings."*

The applicant filed a formal complaint with our office that access to all or part of the record for which he applied had been refused. The complaint form dated January 26, 1990 stated:

> *"Reference MPIC letter Jan 18/90.*
> *I requested the complete Autopac damage report on the other vehicle in an accident that I was involved in on Feb 23/89; also the original statement of the other driver, and any subsequent statements regarding this accident.* ***Request denied 'if they exist'—attached letter.*** *This information is requested because of the difference in statements by (name of third party) in Small Claims Court and Court of Queen's Bench."*

This Freedom of Information Act complaint was investigated by our office. Our investigation included a review of relevant documentation, discussions with the General Counsel, Corporate Secretary and Access Officer of the Corporation and the Corporate Access Coordinator. Discussion took place about the Corporation's position generally on the issues of Estimator's Reports and party statements, and specifically about this case. The relevant legislation was referred to and, as well we referred to a legal opinion prepared by the Department of Justice on the legislation.

By the description of the "damage report" in the application, we understood that the applicant was requesting access to the Estimator's Report pertaining to the other driver's vehicle. In the course of our investigation the Corporation advised it took the position that Estimator's Reports are simply an objective record of a vehicle as observed by the estimator. The Corporation went on to say that in "absence of a compelling reason for denying access, the Corporation is inclined to release such documents". In light of this statement and because the Corporation did not confirm its earlier reliance on exemptions under The Freedom of Information Act for withholding the Estimator's Report requested, I interpreted the Corporation's position to be that it did not oppose release of that document.

The applicant had also requested access to the other driver's original statement to Autopac and any subsequent statements to Autopac regarding the accident. In reviewing the relevant file, my Investigator saw only one statement, that being from the other driver.

At this point I must indicate that The Freedom of Information Act provides that every person, upon application, has the right of access to any record in the custody or control of a department. If access to a record is to be denied, the head must demonstrate that the record comes squarely within the ambit of one, or more, of the exempting sections under the Act.

The Corporation took the position that the disclosure of the third-party statement could reasonably be expected to violate solicitor-client privilege. It is my understanding this privilege belongs to the client and allows the client to refuse to disclose and also to prevent anyone else from disclosing confidential comments between the client and the client's lawyer made for the purpose of giving or obtaining legal advice or assistance in legal matters. After reviewing and considering the document in question, I was satisfied that the initial statement made by an individual reporting an accident to MPIC was not a communication between a client and his solicitor for the purpose of giving or obtaining legal advice or assistance. Accordingly, I was of the opinion that the document could not be withheld on that basis.

The Corporation also took the position that the disclosure of the third party's statement could reasonably be expected to be injurious to the conduct of existing or anticipated legal proceedings. It was my understanding that the access application was not submitted until after the matter had been dealt with in Small Claims Court in the first instance, and by the Court of Queen's Bench on appeal. Accordingly, I did not feel that release of the document could "reasonably" be expected to be "injurious" to the "conduct" of "existing or anticipated legal proceedings". Therefore, based on the evidence, I did not find that the document could be withheld on that basis.

It was my opinion that the applicant should not have been refused access to the Estimator's Report and to the other driver's statement. I, therefore, in accordance with subsection 25(1) of The Freedom of Information Act, recommended to the Manitoba Public Insurance Corporation that access be granted to the documents, namely a two-page document prepared by the estimator and a two-page statement by the other driver, with an attached one-page sketch. I further recommended that, on the driver's document, the name, age, birth date, marital status, address, driver licence information and vehicle registration information be severed.

Under the Act the Corporation had 14 (fourteen) days after receiving my report to send me a written response indicating (a) any action which the head had taken, or proposed to take, to implement the recommendation contained in the report, or (b) reasons why the head refused to take action to implement the recommendation contained in this report. I informed our complainant that upon receipt of a response from the Corporation, I would then report to him concerning the nature of the response and what further action might be available in light of the response.

***

The second case (90-350-0002-F3) was similar to the first one in both the nature of the information sought (an accident incident report of a third party and the Claims Registration form of the other driver) and the response given by the Corporation. As in the first case the Corporation offered the solicitor-client privilege argument which our investigation discounted as a reason for withholding the documentation requested. Also, as in the previous case, the Corporation took the position that the disclosure of the information requested could reasonably be expected to be injurious to the conduct of existing or anticipated legal proceedings. While in this case the complainant advised he intended to proceed to Small Claims Court in this matter, the Corporation did not, in my mind, provide reasons in its discussions with my office as to why or how disclosure of the document could "reasonably" be expected to be "injurious" to the "conduct" of the proceedings. It seemed to me, and I was not convinced otherwise, that release of information would on the contrary promote fairness and enhance the conduct of the proceedings rather than be injurious to them. Accordingly, based on the evidence, I did not feel that information could be withheld on this basis.

Consequently this case, like the other case, culminated with my recommendation that access be given, and the Corporation was given fourteen days to respond to the recommendation.

***

The third case (90-350-0003-F3) was similar to the other two and centered primarily around the Corporation's refusal to grant access to a third party witness statement. While in this case the Corporation, in its refusal, did not advance the solicitor-client privilege argument, it did put forth the position that disclosure could reasonably be expected to be injurious to the conduct of existing or anticipated legal proceedings. In this case at the time legal proceedings were being anticipated, as the issue of liability was scheduled to be considered by the Court of Queen's Bench on November 1, 1990. Although legal proceedings were being anticipated, the Corporation did

not provide reasons in its discussions with my office of why or how disclosure of the documents could "reasonably" be expected to be "injurious" to the "conduct" of the proceedings. Rather it seemed to me, and I was not convinced otherwise, that release of information would promote fairness and enhance the conduct of the proceedings rather than be injurious to them. Accordingly, based on the evidence, I did not feel that the document can be withheld on that basis.

However as further justification for refusing access the Corporation had relied upon subsection 41(1)(c) of The Freedom of Information Act which is as follows:

> ***"Protection of personal privacy.***
> ***41(1)*** *Subject to subsections (3) and (5), the head of a department shall refuse to give access to any record the disclosure of which would constitute an unreasonable invasion of the privacy of a third party, including but not restricted to a record which discloses ...*
>
> *(c) the identity of a third party who has supplied information in confidence to a department for any purpose related to the administration or enforcement of an enactment."*

Therefore the question remaining, to be examined was whether the release of the document would constitute an unreasonable invasion of the privacy of a third party (in this case the witness) in that it would disclose the identity of the third party who had supplied information in confidence to a department for a purpose related to the administration or the enforcement of an enactment. In looking at this question I noted that the Corporation had already provided the applicant with the name and address of the witness. A review of the document in question did not, to my mind, reveal any other personal information concerning the person, and in any event any personal information could certainly be severed. For this reason I did not feel that the document could be withheld on the basis of the unreasonable invasion of the third party's privacy.

It was my opinion that the applicant should not have been refused access to the record in question (a Voluntary Witness Report) and as in the other two cases I formally recommended that access be granted with appropriate severing of the name, address, telephone number and any licence information relating to the third party. I reminded the Manitoba Public Insurance Corporation of the fourteen daytime period in which to respond to my recommendation.

***

The above three cases were all concluded around the same time and all three formal reports recommending access went out under the same date, i.e. October 26, 1990. With those reports the following covering letter went to the Corporation, expressing my concerns. (Please note that in all letters reproduced, while the names of government and department officials remain, names of complainants and other parties have been omitted to preserve confidentiality. Our case file numbers have been substituted where appropriate.)

October 26, 1990

Mr. Shanti Kapoor, Q.C.
General Counsel and Corporate Secretary
Corporate Access Officer
Legal Department
Manitoba Public Insurance Corporation
750 - 330 St. Mary Avenue
Winnipeg, Manitoba R3C 4A4

Dear Mr. Kapoor:

Enclosed please find copies of my final reports on The Freedom of Information Act complaints received by my office from (names of the three complainants). As you will recall, these complaints concern the issue of access to third-party and witness statements held by the Manitoba Public Insurance Corporation. Also enclosed is a copy of an internal report relating to our investigation.

It is my feeling the Corporation has shown a rather limited and narrow interpretation of the legislation—an interpretation which, in my opinion, is contrary to the spirit of the Act.

It is disconcerting to me that it appears the Corporation is considering as a factor the applicant's intended use to the documents when determining whether access will be granted. It is clear that The Freedom of Information Act does not provide for refusal of access based on any consideration of the intended use of the record by the applicant.

Based on my review of your response to the (name of the three complainants) access requests, I must advise that my impression is that the Corporation is placing its own interests for denial over the provisions and spirit of The Freedom of Information Act.

There is recent jurisprudence in Manitoba suggesting that if access to a record is to be denied, the head of the department must demonstrate that the record in question comes squarely within the ambit of one, or more, of the exempting sections of the Act.

In my opinion a full and reasonable explanation of how and why an exemption applies to a particular record is required before access to a record can be withheld, in accordance with the Act.

I thank you in advance for your consideration of my comments.

Yours very truly,

Gordon S. Earle

Gordon S. Earle
Ombudsman

Enclosures
c.c. The Honourable James Glen Cummings
Minister charged with the administration of the Manitoba Public Insurance Corporation Act

Mr. J. Walter Bardua
President & General Manager, MPIC

In response to my correspondence and recommendations, and within the fourteen day time period, I received the following letter:

November 5, 1990

Mr. Gordon S. Earle
Ombudsman
Ombudsman Manitoba
750 - 500 Portage Avenue
Winnipeg, Manitoba
R3C 3X1

Dear Mr. Earle:

This acknowledged your letter of October 26, 1990 which was received in my office October 29. You enclosed copies of your final reports on the Freedom of Information complaints filed in your office by (names of the three complainants).

Before responding to each individual report, it once again becomes necessary for me to reiterate my previous stated position that the Corporation, at all times, approaches all requests for disclosure of documents under The Freedom of Information Act with a firm commitment to fully comply with both the letter and the spirit of that Act. In doing so, however, the Corporation must recognize that certain documents and information on specific claim files may be the property of the individual claimant and as such, requests for disclosure must be subject to considerations of confidentiality and, where applicable, solicitor-client privilege, as set out in The Freedom of Information Act.

In seeking to apply the intent of The Freedom of Information legislation, in so far as it relates to full disclosure of documents, in my opinion, it also becomes necessary to keep in mind the two distinct roles of the Corporation, namely:

a) that of a Crown Agency operating as an insurer within the Province of Manitoba with its general business operations and records governed by the provisions of The Freedom of Insurance (sic) Act; and,

b) that of an insurer charged with the responsibility of providing legal representation to and defending the rights of its insureds in instances where claims are made against those individual named insureds.

It is my view that the Corporation, in fulfilling this second role, has an obligation to protect the confidential nature of the insured's file. I believe that a valid legal argument can be raised as to whether documents on an individual claimant's file, which are the property of the insured, are in fact subject to access under The Freedom of Information Act.

Dealing now with the specific applications:

a) (90-350-0003-F3)

In my view, the statement provided by the witness, (name of witness), is exempt from access on the following grounds:

i) the witness' statement was provided to the Corporation on a confidential basis and as such, in the absence of the consent of the witness, access is refused under Section 41(1);

ii) access is also refused under Section 40(1) on the basis that disclosure could reasonably be expected to be injurious to the conduct of anticipated legal proceedings. Disclosure of such a witness' statement is protected under The Queen's Bench Rules governing civil litigation. To disclose the statement at this time would result in a loss of protection to which our insured would otherwise be entitled in the anticipated legal proceedings and would constitute a prejudice of the insured's position. This interpretation is supported in the Legal Services Publication dated May 31, 1988 and referred to at page 4 of the memo prepared by G. Perry of your department.

b)(90-350-0002-F3)

This application involves a request for disclosure of the Claims Registration form filed by our insured. Long standing principles of insurance law guarantee the confidentially of statements and information provided by an insured to this insurer. This principle of confidentially is confirmed in Section 24 of The Manitoba Public Insurance Corporation Act.

The confidential information provided to the Corporation by (name of third party) forms part of her individual claim file, and its ownership rests with (name of third party). Relying on the provision in Section 41 of The Freedom of Information Act, the Corporation maintains its position that the Claims Registration form is not subject to disclosure.

c)(90-350-0001-F3)

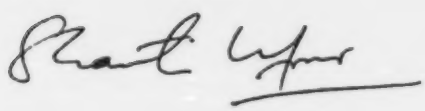
The Corporation maintains its position that the disclosure of the initial statement made by our insured, (name of third party) to the Corporation is exempt from disclosure on two grounds:

i) that it is subject to the solicitor-client privilege exemption on the basis that it was given in contemplation of litigation. There is existing jurisprudence which supports the position that solicitor-client privilege attaches to any statement made by an insured to his insurer following an accident in which property damage or injury has occurred (Anger v. Dykstra, vol. 43 Carswell Practice Cases, p. 268).

ii)the principles of confidentiality stated above apply with equal force to disclosure of (name of third party) statement, which was provided to the Corporation as part of his individual claim file.

In my view, it is not the intent of The Freedom of Information Act to treat confidential insurance claim file materials as public documents. All three applications for disclosure referred to above represent requests by one party to an action for access to documents from the claim file of the opposite party. In claiming exemption from disclosure under Sections 40 and 41 of The Freedom of Information Act, the Corporation has maintained the protection afforded to such information under the litigation process. In my view such denial is in keeping with the letter, spirit, and intent of The Freedom of Information Act.

Yours truly,



Shanti S. Kapoor, Q.C.
Corporation Access Officer

SSK:bds

cc: The Honourable Glen Cummings
J. Walter Bardua

Upon receipt of the Corporation's response to my recommendation and in accordance with Section 27 of The Freedom of Information Act I wrote to all three complainants indicating the nature of the response and my opinion that the response of the Corporation was not justified by the provisions of the Act. As well the complainants were advised of their right to appeal to the court for access to the record and informed of the time limit for filing an appeal. While this final report to the complainants satisfied the responsibilities placed upon me under The Freedom of Information Act, I did feel some obligation to comment further on the Corporation's position in this matter and I did so with the following letter:

November 15, 1990

Mr. Shanti S. Kapoor, Q.C.
Corporate Access Officer
Manitoba Public Insurance Corporation
Box 6300, 9th Floor, 330 Graham Avenue
Winnipeg, Manitoba
R3C 4A4

Dear Mr. Kapoor:

As you are aware, I have received the response dated November 5, 1990 to my recommendations under The Freedom of Information Act relating to the complaints received from (names of complainants). You should also have received my report to the complainants which advised that I did not feel the response was justified.

While my report to the complainants satisfies the responsibilities placed on the Ombudsman under The Freedom of Information Act, the Corporation's position in this matter raises some specific concerns upon which I feel obliged to comment.

I note that in your report you advise that it is necessary for you to reiterate your previous stated position that the Corporation at all times approaches all requests for disclosure of documents under The Freedom of Information Act with a firm commitment to fully comply with the letter and spirit of the Act. While I am pleased that this may be the Corporation's stated position, based on your report, I again have difficulty accepting the Corporation is in fact fully complying with the letter and spirit of the Act. I must say that it seems to me that in reality, the Corporation is not accepting that every person has a right of access to any record in the custody of control of a Department, subject only to the exemption provisions of The Freedom of Information Act.

I have some serious concerns with the following comments which seem to support a position that is contrary to both the letter and spirit of The Freedom of Information Act. In your response you support denial of access to records on the premise that the records are, or may be, the property of the claimants and I quote:

> *"The Corporation must recognize that certain documents and information on specific claim files* ***may be the property of the individual claimants."*** *(emphasis added)*

You refer to the Corporation's two distinct roles, a) that of a Crown agency operating as an insurer and b) that of an insurer charged with the responsibility of providing legal representation to and defending the rights of its insureds. In this regard you state, "the Corporation, in fulfilling the second role, has an obligation to protect the confidential nature of the **insured's file**." (emphasis added).

You also stated, "I believe a valid legal argument can be raised as to whether documents on an individual claimant's file **which are the property of the insured,** are in fact subject to access under The Freedom of Information Act." (emphasis added).

In the (90-350-0002-F3) case you state, "the confidential information provided to the Corporation by (name of third party) forms part of her individual claim file, **and its ownership rests with (name of third party)**." (emphasis added).

Firstly, the Manitoba Public Insurance Corporation is clearly a Crown agency to which The Freedom of Information Act applies. Secondly, Section 3 of The Freedom of Information Act gives every person a right to any record in the **custody** or under the **control** of a Department or Agency, subject to the exemption provisions under the Act.

In my opinion, to suggest that a valid legal argument can be raised that claimant files are not subject to The Freedom of Information Act, one must disregard The Freedom of Information Act, The Manitoba Public Insurance Corporation Act, and the Corporation's practice and policies.

Section 24 of The Manitoba Public Insurance Corporation Act which was referred to in the Corporation's response to my recommendations, provides that the information and reports, **shall be the property of the Corporation.**

In addition, the Corporation's Automobile Claims Interpretation Manual, Section F, Bulletin 5, dealing with confidentiality and release of information reads, "claim file documents, particularly statements and investigative reports, are of a highly privileged and confidential nature. Such reports can only be divulged to outside sources with the express consent of the Claims Office Manager, or claims Centre Manager, **charged with the file.**"

The above clearly indicates to me that documents in claimants files are the property of the Corporation and the documents are in the custody or control of the Corporation.

Over the years, our office has reviewed many of the Corporation's claim files when investigating complaints received against the Corporation under The Ombudsman Act. Our review has shown that it is not unusual for a claimant's file to include third party claims registration forms, witness statements obtained by the third party, estimator reports on third party vehicles, etc. I understand that adjustors obtain this information to assist in making a determination on liability. Claimants may also want this information from their adjuster to make a determination on whether to proceed to Small Claims Court.

While these records formed part of the claimant's file, I am not aware of any case where the claimant has had access to his or her claim file on the grounds of ownership. I would suggest that the Corporation still maintains control of a claimant's file for purposes of access. It is interesting to note that the (90-350-0003-F3) claim file contains a copy of the Voluntary Witness Report and Statement from (name of third party). This is the document for which he requested access and was denied by the Corporation.

Another serious concern I have relates to the Corporation's reliance on factors other than provisions of The Freedom of Information Act when determining access to information. In my recommendations regarding the cases of (names of the three complainants), I referred to Section 65 of The Freedom of Information Act which basically states that other Acts of the Legislature and regulations are subject to The Freedom of Information Act. Nevertheless, the Corporation in response to my recommendations refers to disclosures which are protected under the Queen's Bench Rules, long standing principles of insurance laws, and the principles of confidentiality in Section 24 of The Manitoba Public Insurance Corporation Act. In addition, the Corporation's response seems to indicate some special status to insurance claim file materials where it is stated that, "it is not the intent of The Freedom of Information Act to treat confidential insurance claim file materials as public documents." It appears to me that the Corporation is still not accepting the spirit and letter of The Freedom of Information Act over other legislation which is subject to the Act.

I believe that in the interest of fairness and equity, the Corporation should give further consideration to its position on access to documents in its file and a policy and practice should be put in place which is consistent with The Freedom of Information Act.

While I have given my opinion on the validity of the denial of access to (names of the three complainants), my concern is for the future. In a recent court ruling dealing with Manitoba's Freedom of Information Act, Mr. Justice Oliphant of the Court of Queen's Bench stated:

> *The thrust of the Act is to allow citizens a right of access to any record in the custody or under the control of a department of the Government of Manitoba. The right of access is, of course, subject to the exemptions. The exemptions derogate from the thrust of the Act. They must be strictly interpreted and, to come within the scope of an exemption, the record must fall squarely within the ambit of the exempting section.*

To argue against access on the basis of who owns the file, or provisions of other Acts seem irrelevant and, in my opinion is not in keeping with the spirit and letter of The Freedom of Information Act.

I would appreciate being advised of any further consideration you will be giving this matter.

Yours very truly,

Gordon S. Earle

Gordon S. Earle
Ombudsman

cc: The Honourable Glen Cummings
Minister charged with the administration of
The Manitoba Public Insurance Corporation

Mr. J. Walter Bardua, President
Manitoba Public Insurance Corporation

The Corporate Access Officer, under date of November 30, 1990 acknowledged receipt of my correspondence and indicated that he was reviewing the contents and would provide me with his response in the near future. However on January 15, 1991 he contacted my office and informed us that the complainant in case number 90-350-0002-F3 had, on December 14, 1990, filed a motion in court regarding the denial of access and thus he (the Access Officer) would wait until the courts had made a decision on the matter before responding to my letter. It was agreed that such would be appropriate. At the time of writing this report the case before the court had not been concluded.

Putting the Cart Before the Horse

90-330-0001-F3 **Manitoba Rural Development**

Complaint: *Refused Access*
Finding: *Undetermined*
Disposition: *Discontinued by Complaint*
Result: *No Action Required*

This complaint illustrated the importance of following the formal procedure set forth under The Freedom of Information Act for seeking access to information. Sometimes individuals seeking information will approach provincial departments or agencies informally or in a manner other than specified in the Act. Perhaps individuals requesting information will telephone, visit, or even write to the Department which has custody or control of the information being sought. These are all quite acceptable means of seeking access and in many cases individuals may be successful in obtaining, through those approaches, access to the records in question. However what one must realize is that if one applies for access informally or in a manner other than specified under the Act, and if one is refused access, one should not then immediately file a formal complaint with the Ombudsman concerning the refusal of access. Although every applicant for access to a record under The Freedom of Information Act has the right to file, with the Ombudsman, a complaint about refusal of access that complaint must be in prescribed form and can only be made after the applicant, in accordance with the Act, has made application in prescribed form to the department which the applicant believes has custody or control of the record.

In this particular case the complainant attended our office and submitted a signed formal complaint dated May 28, 1990, the same date as her visit. She was complaining about not being granted access to a document presented to Cabinet pertaining to the 1990 Manitoba reassessment. When she was asked if she could provide us with a copy of her formal application for access and the Department's formal response, she indicated that she had applied verbally for access by telephone and had received, from the Assistant to the Minister of Rural Development, a verbal response indicating that the information requested was confidential as it was a document presented to Cabinet.

Our office explained to the complainant the role of the Ombudsman under The Freedom of Information Act indicating that the Ombudsman would not be in a position to formally review, under that Act, the refusal of access because she had not formally applied in prescribed form for access to the document under the Act. The applicant was given the appropriate application for access form, advised to apply formally for the information in question, and informed of her right to complain to the Ombudsman should she be dissatisfied with the formal response from the Department. We heard nothing further from the complainant and because we had not closed the file on her initial complaint to our office, we contacted her for an update on her problem. The complainant confirmed that she had formally applied and had received, from the Access Officer for Rural Development, much of the information she had requested. She indicated that two items had been exempted but she was satisfied that the explanation given to her was reasonable. Accordingly she was discontinuing her original complaint to our office. Our file was closed.

In this case it is significant to note that following an informal request for access to information the applicant felt, on the basis of the informal response, a need to formally complain to the Ombudsman regarding a refusal of access. However following the formal application for access process which included a formal response by the Department, this same applicant did not feel a need to complain about refusal of access. This may suggest that the formal process provides a sufficient level of clarification regarding both the access request and response, so that even if a refusal is involved applicants may be satisfied that their applications were handled reasonably and in keeping with the terms of The Freedom of Information Act.

Public Relations

As I mentioned in my last annual report, The Freedom of Information Act places no particular public relations function on the Ombudsman, other than to report annually to the Speaker of the Assembly on the exercise and performance of my powers, duties and functions under this Act. Nonetheless in the course of performing my duties under The Ombudsman Act I have many opportunities to speak publicly to a variety of audiences and on those occasions I usually include information about The Freedom of Information Act and my role under that Act.

As well during 1990 I participated in events dealing specifically with access and privacy issues. In January 1990 I was a speaker at a symposium in Winnipeg entitled *The Protection of Personal Information An Issue for the '90's!!* At that symposium I presented the opening remarks entitled *Privacy in Manitoba: A Reflection.* Other speakers at this symposium and training session on privacy laws were: **John Grace,** Federal Privacy Commissioner who spoke on *Privacy in the '90's;* **Professor Dale Gibson,** Faculty of Law, University of Manitoba who spoke on *Privacy: The Charter of Rights and Freedoms and Legal Protections;* **Gordon Dodds,** Associate Provincial Archivist, Government Records Manitoba, **Frank White,** Director, Freedom of Information and Privacy Policy Branch, Management Board of Ontario, **Francine Lalonde,** Chief, Access to Information Services, Department of Communications, Quebec, and **Stephanie Perrin,** Senior Coordinator, Access to Information and Privacy Officer, Department of Communications, Ottawa - all of whom participated in a panel discussion on *Protecting Personal Information: Federal and Provincial Comparisons.*

Also at this symposium the topic *Protecting Privacy and Surveillance Societies* was discussed by **David Flaherty,** Professor of History and Law, University of Western Ontario, London, Ontario. *Approaches to Privacy in the Private Sector* was discussed by a panel moderated by **Tom Riley,** President of Riley Information Services Inc., Toronto and consisting of panelists: **Joanne DeLaurentis,** Vice President and Director of Public Affairs, Canadian Bankers Association, Toronto, **William Loewen,** Chairman, Comcheq Payroll Services Inc., Winnipeg, and **Addie Penner,** Acting Dean, Faculty of Social Work, University of Manitoba.

The symposium was concluded by remarks by the organizer of the conference, **Tom Riley** who spoke on *Privacy and Transborder Data Flows: A Global Perspective.*

During April 1990 I was pleased to attend two conferences on Freedom of Information, both held in Ottawa. The first was an international meeting sponsored by Inger Hansen, Q.C. Information Commissioner of Canada. Ms. Hansen's conference was for officials appointed by their governments as commissioners or ombudsmen responsible for investigating complaints under freedom of information and access to information laws. This international meeting, held on April 18, 19 and 20 provided a forum for the exchange of ideas, the discussion of problems of mutual concern and above all the opportunity to learn from each other. As well as representatives from the Canadian provinces of Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, and Newfoundland there were representatives from the United States of America, Australia, Denmark, Finland, France, Netherlands, New Zealand and various other countries. This conference proved to be a very interesting and a very useful experience for all of us involved with freedom of information issues.

The second conference held in Ottawa in April 1990 was organized by Riley Information Services, Toronto and presented by the Canadian Access and Privacy Association. The conference was held on April 23 and 24 and was entitled *Access '90: Focussing on Daily Access/Privacy Issues.* The conference was billed as an international workshop and training session on access and privacy laws. It dealt with many topics including:

1. *Freedom of Information in France*
2. *Privacy and Access: A Balancing Act: Looking at Today's Issues*
3. *The Complaints/Appeals Process: A Comparison*
4. *Privacy and Aids*
5. *The Third Party Process and Commercial Confidentiality*
6. *Freedom of Information in the Electronic Age: What Does the Future Hold?*
7. *Electronic Databases: The Implications for Access Laws*

I was pleased to present a talk on *Access and Freedom of Information: Is it Working: What's it Good For?* This conference was attended by a very large number of delegates, mostly from Canada but it also included representatives from the United States, Scotland, Australia and France. The sessions were indeed very stimulating and provided much information, support, and encouragement for those of us working in this new and expanding field of access to information and protection of privacy.

CHAPTER F175

THE FREEDOM OF INFORMATION ACT

(Assented to July 11, 1985)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions.

1 In this Act

"applicant" means a person who applies for access to a record under this Act; ("demandeur")

"application" means an application for access to a record under this Act; ("demande")

"Cabinet" means the Executive Council appointed under The Executive Government Organization Act, and includes a committee of the Executive Council; ("Cabinet")

"complainant" means a person who files a complaint with the Ombudsman; ("plaignant")

"complaint" means a complaint filed with, or initiated by, the Ombudsman under this Act; ("plainte")

"court" means the Court of Queen's Bench. ("Cour")

"Crown agency" means

(a) any board, commission, association, or other body, whether incorporated or unincorporated, all the members of which, or of the board of management or board of directors of which, are appointed by an Act of the Legislature or by order of the Lieutenant Governor in Council, or

CHAPITRE F175

LOI SUR LA LIBERTÉ D'ACCÈS À L'INFORMATION

(Sanctionnée le 11 juillet 1985)

SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions

1 Les définitions qui suivent s'appliquent à la présente loi.

"Cabinet" Le Conseil exécutif nommé en vertu de la Loi sur l'organisation du gouvernement, y compris un comité du Conseil. ("Cabinet")

"Cour" La Cour du Banc de la Reine. ("court")

"demande" Demande de communication d'un document, en vertu de la présente loi. ("application")

"demandeur" La personne qui fait une demande de communication d'un document, en vertu de la présente loi. ("applicant")

"document" Toutes informations enregistrées, quels que soient leur forme et leur support. Sans préjudice de la généralité de ce qui précède, sont assimilés à un document :

a) toute correspondance, note, tout dossier, registre, catalogue, livre, plan, carte, dessin, diagramme, photographie, film, tableau, illustration ou graphique, microformule, enregistrement sonore, magnétoscopique et informatisé.

(b) any corporation the election of the board of directors of which is controlled by the Crown, directly or indirectly, through ownership of the shares of the capital stock thereof by the Crown or by a board, commission, association, or other body which is a Crown agency within the meaning of this definition,

but does not include the Provincial Auditor, Chief Electoral Officer or Ombudsman; ("organisme gouvernemental")

"department" means a department or branch of the Executive Government of Manitoba, and includes a Crown agency; ("ministère")

"designated minister" means the minister charged by the Lieutenant Governor in Council with the administration of this Act; ("ministre désigné")

"exempt information" means information which falls within an exemption; ("renseignements privilégiés")

"exemption" means a class or category of information to which the head of a department is required or authorized to refuse access under sections 38 to 49; ("exemption")

"head" or "head of a department" means

(a) in the case of an unincorporated Crown agency, the minister charged with the administration of the Act under which the agency is established,

(b) in the case of an incorporated Crown agency, the chief executive officer of the agency, and

(c) in all other cases, the minister charged with the administration of the department; ("responsable" ou "responsable d'un ministère")

"investigation" means the investigation by the Ombudsman of a complaint; ("enquête")

"minister" means a member of the Cabinet. ("ministre")

b) tout manuel ou autre guide utilisé par les cadres ou les employés d'un ministère, afin d'interpréter un texte législatif ou de diriger un programme ministériel ou des activités de même nature qui concernent le public;

c) une transcription des notes explicatives se rapportant à un dossier, lorsque la forme du dossier est telle qu'il ne peut être compris qu'en y joignant de telles notes;

d) une copie d'un dossier; et

e) une partie d'un dossier. ("record")

"enquête" L'enquête faite par l'Ombudsman à l'égard d'une plainte. ("investigation")

"exemption" Classe ou catégorie de renseignements à l'égard de laquelle le responsable d'un ministère doit ou peut refuser la communication, en application des articles 38 à 49. ("exemption")

"fonctionnaire" Sont comprises parmi les fonctionnaires les personnes de la fonction publique du gouvernement du Manitoba ou de tout autre gouvernement :

a) qui sont autorisées à faire ou à mettre en application tout acte ou toute chose ou à exercer tout pouvoir; ou

b) à l'égard desquelles une loi d'intérêt public impose un devoir ("public officer")

"ministère" Ministère ou service du gouvernement du Manitoba, y compris un organisme gouvernemental. ("department")

"ministre" Membre du cabinet. ("minister")

"ministre désigné" Le ministre chargé par le lieutenant-gouverneur en conseil de l'application de la présente loi. ("designated minister")

"Ombudsman" L'Ombudsman nommé en vertu de la Loi sur l'Ombudsman, y compris toute personne qui est employée par celui-ci ou qui agit en vertu de son autorité. ("Ombudsman")

"organisation" Est assimilé à une organisation un syndicat ouvrier ou une autre association non constituée en corporation. ("organization")

"Ombudsman" means the Ombudsman appointed under The Ombudsman Act, and includes any person employed by or otherwise acting under the authority of the Ombudsman; ("Ombudsman")

"organization" includes a trade union or other unincorporated association; ("organisation")

"public officer" includes any person in the public service of the Government of Manitoba or any other government

(a) who is authorized to do, or enforce the doing of, any act or thing or to exercise any power, or

(b) upon whom any duty is imposed, by or under any public Act; ("fonctionnaire")

"record" means any kind of recorded information, regardless of physical form or characteristics, and without restricting the generality of the foregoing includes

(a) any correspondence, memorandum, file, register, index, book, plan, map, drawing, diagram, photograph, film, painting, pictorial or graphic work, microform, sound recording, video tape, and machine-readable record,

(b) any manual, handbook or other guideline used by the officers or employees of a department to interpret an enactment or to administer a departmental program or activity which affects the public,

(c) where the form of a record is such that the record cannot be understood without explanation, a transcript of the explanation of the record,

(d) a copy of a record, and

(e) a part of a record; ("document")

"third party", in respect of an application, means any person or organization other than the applicant or a department. ("tiers")

"organisme gouvernemental" Selon le cas :

a) les régies, commissions, associations ou autre entités, constituées ou non en corporations, dont tous les membres ou tous ceux du conseil d'administration ou de direction sont nommés par une loi de la Législature ou par un décret du lieutenant-gouverneur en conseil; ou

b) toute corporation dont l'élection du conseil de direction est sous l'autorité directe ou indirecte de la Couronne, par l'entremise de la propriété des actions du capital-actions de ladite corporation par la Couronne ou par une régie, commission, association ou autre entité qui est un organisme gouvernemental au sens de la présente définition.

Le vérificateur provincial, le directeur général des élections et l'Ombudsman ne sont pas assimilés à un organisme gouvernemental. ("Crown agency")

"plaignant" La personne qui dépose une plainte auprès de l'Ombudsman. ("complainant")

"plainte" Plainte qui est déposée auprès de l'Ombudsman ou qui émane de celui-ci, en vertu de la présente loi. ("complaint")

"renseignements privilégiés" Renseignements qui sont compris dans une exemption. ("exempt information")

"responsable" ou "responsable d'un ministère" :

a) dans le cas d'un organisme gouvernemental non constitué en corporation, le ministre chargé de l'application de la loi sous le régime de laquelle l'organisme est constitué;

b) dans le cas d'un organisme gouvernemental constitué en corporation, le mandataire général de l'organisme; et

c) dans tous les autres cas, le ministre chargé de l'administration du ministère. ("head" or "head of department")

"tiers" Dans le cas d'une demande, toute personne ou organisation autre que le demandeur ou qu'un ministère. ("third party")

Meaning of access.
2(1) A person who is given access to a record under this Act has, subject to section 7, the right
(a) to examine the record; or
(b) to obtain a copy of the record.

Exercise of access right.
2(2) The head of the department which gives access to a record under this Act shall decide whether access is given in accordance with clause (1)(a) or clause (1)(b), but where the condition of the record so permits, the head shall give the applicant an opportunity both to examine the record and to obtain a copy of it.

Records stored by electronic means.
2(3) Where a department receives an application for access to a microform, film, sound recording, machine-readable record or other record of information stored by electronic means, the head of the department shall be presumed to have given access to the record under this Act where the head
(a) permits the applicant to examine a transcript of the record; or
(b) provides the applicant with a copy of the transcript of the record; or
(c) in the case of a record produced for visual or aural reception, permits the applicant to view or hear the record or provides the applicant with a copy of it.

Right of access.
3 Subject to this Act, every person has, upon application, a right of access to any record in the custody or under the control of a department, including any record which discloses information about the applicant.

Contents of application.
4 Every application shall be made in prescribed form to the department which the applicant believes has custody or control of the record, and shall provide sufficient detail to enable an experienced officer or employee of the department to identify and locate the record.

Accès
2(1) Une personne à qui est accordée la communication d'un document, en vertu de la présente loi, a le droit, sous réserve de l'article 7 :
a) de consulter le document; ou
b) d'en obtenir une copie.

Exercice du droit à la communication d'un document
2(2) Le responsable du ministère qui accorde la communication d'un document en vertu de la présente loi doit décider si la communication est accordée conformément à l'alinéa (1)a) ou b). Cependant, lorsque l'état du document le permet, le responsable doit permettre au demandeur de consulter le document et d'en obtenir une copie.

Documents conservés par des moyens électroniques
2(3) Lorsqu'un ministère reçoit une demande de communication d'une microformule, d'un film, d'un enregistrement sonore, d'un enregistrement informatisé ou d'un autre document qui renferme des renseignements et qui est conservé par des moyens électroniques, le responsable du ministère est réputé avoir accordé la communication du document en vertu de la présente loi :
a) s'il autorise le demandeur à consulter une transcription du document;
b) s'il fournit au demandeur une copie de la transcription du document; ou
c) s'il autorise le demandeur à regarder ou à entendre le document ou s'il lui fournit une copie du document, lorsque ce dernier est produit afin d'être vu ou entendu.

Droit d'accès
3 Sous réserve de la présente loi et suite à une demande, toute personne a droit à l'accès aux documents sous la garde ou la responsabilité d'un ministère, y compris à ceux qui divulguent des renseignements au sujet du demandeur.

Contenu de la demande
4 Chaque demande doit être faite, dans les formes prescrites, auprès du ministère qui, de l'avis du demandeur, est responsable du document ou en a la garde; elle doit être rédigée en des termes suffisamment précis pour permettre à un cadre ou à un employé expérimenté du ministère d'identifier ou de trouver le document.

Notice of right to file complaint.
5 The prescribed form for applications shall contain notification that the applicant has the right to file a complaint with the Ombudsman in the event the department fails to respond to the application in a manner authorized by this Act within 30 days.

Notice regarding access.
6(1) Subject to sections 9 and 11, the head of a department which receives an application shall, within 30 days after the department receives the application,

(a) send written notice to the applicant as to whether or not the head agrees or refuses to give the applicant access to the record; and

(b) if access is to be given, give the applicant access to the record.

Contents of refusal.
6(2) Where the head refuses to give the applicant access to the record, the notice referred to in clause (1)(a) shall state the right of the applicant to file a complaint with the Ombudsman about the refusal to give access, and the notice shall further state

(a) in the case of a record which the department claims does not exist or cannot be located, that the record does not exist or cannot be located;

(b) in the case of a record which does exist and can be located, the specific provision of this Act upon which the refusal to give access is based.

Fees.
7 An applicant who is given access to a record shall, prior to examining the record or obtaining a copy thereof, pay to the department which controls the record such fees as may be prescribed by regulation.

Failure to respond within 30 days.
8 Where the head of a department does not respond to an application in a manner authorized by this Act within 30 days after the department receives the application, the head shall, for purposes of this Act, be presumed to have refused to give the applicant access to the record.

Avis du droit de dépôt d'une plainte
5 La formule prescrite des demandes doit comprendre un avis indiquant que le demandeur a le droit de déposer une plainte auprès de l'Ombudsman, dans le cas où le ministère néglige de donner suite à la demande dans un délai de 30 jours, d'une façon que la présente loi autorise.

Avis relatif à une demande de communication de document
6(1) Sous réserve des articles 9 et 11, le responsable d'un ministère recevant une demande est tenu, dans les 30 jours suivant la réception d'une telle demande par le ministère :

a) d'aviser par écrit le demandeur qu'il accepte ou refuse de lui communiquer le document; et

b) le cas échéant, de lui accorder la communication du document.

Contenu du refus
6(2) Lorsque le responsable refuse au demandeur la communication du document, l'avis prévu à l'alinéa (1)a) doit mentionner le droit du demandeur de déposer une plainte auprès de l'Ombudsman relativement au refus; l'avis doit mentionner en outre :

a) le fait que le document n'existe pas ou ne peut être trouvé lorsque, selon le ministère, il s'agit d'un tel cas;

b) la disposition précise de la présente loi sur laquelle est fondé le refus de communication de document, dans le cas d'un document qui existe et qui peut être trouvé.

Frais de communication
7 Le demandeur à qui la communication d'un document est accordée doit, avant de le consulter ou d'en obtenir une copie, payer au ministère responsable du document le droit fixé par règlement.

Défaut de donner suite à la demande
8 Lorsque le responsable d'un ministère ne donne pas suite à une demande d'une façon que la présente loi autorise, dans les 30 jours suivant la réception d'une telle demande par le ministère, il est réputé, aux fins de la présente loi, avoir refusé au demandeur la communication du document.

Forwarding application.
9(1) Where a department receives an application for access to a record which the department does not have in its custody or under its control, the head of the department shall make all necessary inquiries in order to determine whether any other department has custody or control of the record, and where the head determines that another department has custody or control of the record, the head shall

(a) forward the application to the other department; and

(b) send written notice to the applicant that the application has been forwarded to the other department.

Demande envoyée à un autre ministère
9(1) Lorsqu'un ministère reçoit une demande de communication d'un document dont il n'a pas la garde ou la responsabilité, le responsable du ministère doit effectuer toutes les enquêtes nécessaires afin de déterminer si le document est sous la garde ou la responsabilité d'un autre ministère. Lorsqu'il détermine un tel fait, il doit :

a) envoyer la demande à l'autre ministère; et

b) aviser par écrit le demandeur que la demande a été envoyée à l'autre ministère.

Transfer of application.
9(2) Where the head of a department which receives an application reasonably believes that another department has a greater interest in the record referred to in the application, the head may transfer the application to the other department, and, upon making a transfer, the head shall send written notice of the transfer to the applicant.

Transmission de la demande
9(2) Si le responsable d'un ministère recevant une demande juge de façon raisonnable que le document mentionné dans la demande concerne davantage un autre ministère, il peut la transmettre à l'autre ministère. Suite à la transmission de la demande, il doit en aviser par écrit le demandeur.

Meaning of greater interest.
9(3) For purposes of subsection (2), a department has a greater interest in a record if

(a) the record was originally prepared in or for the department; or

(b) the department was the first department to obtain the record.

Justification de la transmission
9(3) Pour les besoins du paragraphe (2), un document concerne davantage un ministère :

a) si ce dernier est à l'origine du document, soit qu'il l'ait préparé lui-même ou qu'il ait d'abord été préparé à son intention; ou

b) si ce dernier a été le premier ministère à recevoir le document.

Effect on time limits.
10 A department to which an application is forwarded or transferred under section 9 shall respond to the application in a manner authorized by this Act as if the department had originally received the application, and for purposes of the time limits set out in this Act, the department shall be presumed to have received the application on the same day as the department which originally received the application.

Conséquence relative aux délais
10 Un ministère à qui une demande est envoyée ou transmise en application de l'article 9 doit donner suite à la demande d'une façon que la présente loi autorise, comme s'il avait reçu la demande dès le début. Aux fins du calcul des délais prévus dans la présente loi, le ministère est réputé avoir reçu la demande le jour même de sa réception initiale par un autre ministère.

Extension of time limits.
11(1) The head of a department which receives an application may extend the 30 day limit set out in subsection 6(1) for up to 30 further days if, in order to process the application, the department must

Prorogation du délai
11(1) Le responsable d'un ministère recevant une demande peut proroger le délai de 30 jours mentionné au paragraphe 6(1) d'une période supplémentaire de 30 jours si le ministère doit, afin de traiter une demande :

(a) search for, or examine, such a large number of records that meeting the 30 day limit would unreasonably interfere with the operations of the department; or

(b) consult with another office of the department, or with another department, in circumstances such that the consultations cannot reasonably be completed within 30 days.

Notice of extension.

11(2) A head who extends the 30 day limit in accordance with subsection (1) shall, within 30 days after the department receives the application, send written notice to the applicant of

(a) the extension;

(b) the right of the applicant to file a complaint with the Ombudsman about the extension; and

(c) the right of the applicant to file a complaint with the Ombudsman if, forthwith on the expiry of the extension, the head does not respond to the applicant in a manner authorized by subsection (3).

Access or refusal.

11(3) Forthwith on the expiry of an extension under this section, the head shall send written notice to the applicant as to whether or not the head agrees or refuses to give the applicant access to the record, and shall, as the case may be,

(a) give the applicant access to the record; or

(b) state in the notice details of the matters referred to in subsection 6(2), including the right of the applicant to file a complaint with the Ombudsman about the refusal to give access.

Failure to respond.

11(4) Where on the expiry of an extension under this section the head does not respond to the applicant in a manner authorized by subsection (3), the head shall be presumed to have refused to give the applicant access to the record.

a) chercher ou consulter un si grand nombre de documents que l'observation du délai de 30 jours entraverait de façon sérieuse le fonctionnement du ministère; ou

b) consulter un autre bureau du ministère ou un autre ministère dans des circonstances telles que les consultations rendraient pratiquement impossible l'observation du délai de 30 jours.

Avis de prorogation

11(2) Un responsable qui proroge le délai de 30 jours conformément au paragraphe (1) doit, dans les 30 jours suivant la réception de la demande par le ministère, aviser par écrit le demandeur :

a) de la prorogation;

b) de son droit de déposer une plainte auprès de l'Ombudsman, relativement à la prorogation; et

c) de son droit de déposer une plainte auprès de l'Ombudsman aussitôt à la fin de la prorogation, si le responsable ne donne pas suite à sa demande, d'une façon autorisée par le paragraphe (3).

Communication du document accordée ou refusée

11(3) Immédiatement à la fin d'une prorogation prévue en application du présent article, le responsable doit aviser par écrit le demandeur qu'il accepte ou refuse de lui communiquer le document et doit, selon le cas :

a) accorder au demandeur la communication du document; ou

b) mentionner en détail dans l'avis les affaires prévues au paragraphe 6(2), y compris le droit du demandeur de déposer une plainte auprès de l'Ombudsman relativement au refus de communication du document.

Défaut de donner suite à la demande

11(4) Lorsqu'à la fin d'une prorogation prévue en application du présent article, le responsable ne donne pas suite à la demande d'une façon autorisée par le paragraphe (3), il est réputé avoir refusé au demandeur la communication du document.

Severability.
12(1) Notwithstanding any other provision of this Act, where a department receives an application for access to a record which contains exempt information, the head of the department shall give access to all the information in the record which is not exempt and which can reasonably be severed from the exempt information.

Explanation or interpretation of record.
12(2) Where the head of a department gives access to any record under this Act, the head may, without altering the record, supply the applicant with such additional information as the head believes will be necessary to explain or interpret the record.

Information filed by applicant.
13(1) An applicant given access to a record which discloses information about himself or herself is entitled to submit to the department which has custody or control of the record

(a) a written objection respecting any error or omission of fact which the applicant alleges is contained in the record; and

(b) a written objection to, or explanation or interpretation of, any opinion which has been expressed by a third party about the applicant and which is contained in the record.

Information becomes part of record.
13(2) As of the date of its submission, any objection, explanation or interpretation submitted under subsection (1) becomes part of the record and shall not be destroyed, altered or removed therefrom.

Correction of factual error.
13(3) Where the head of the department which has custody or control of a record referred to in subsection (1) is satisfied that the record contains an error or omission of fact, the head shall cause the record to be corrected.

Renseignements non privilégiés extraits d'un document
12(1) Par dérogation à toute autre disposition de la présente loi, lorsqu'un ministère reçoit une demande de communication d'un document qui contient des renseignements privilégiés, le responsable du ministère doit accorder la communication de tous les renseignements non privilégiés qui sont contenus dans le document et qui peuvent être extraits sans problèmes sérieux.

Explication ou interprétation d'un document
12(2) Le responsable d'un ministère qui accorde la communication d'un document en vertu de la présente loi peut, sans le modifier, fournir au demandeur les autres renseignements qu'il juge être nécessaires pour l'explication ou l'interprétation ultérieure du document.

Renseignements déposés par le demandeur
13(1) Un demandeur à qui est accordée la communication d'un document qui divulgue des renseignements à son sujet a droit de soumettre au ministère qui a la garde ou la responsabilité du document :

a) une opposition écrite concernant toute erreur ou omission de fait qui, selon le demandeur, est contenue dans le document; et

b) une opposition écrite à une opinion qu'un tiers a exprimée au sujet du demandeur et qui est contenue dans le document, ou une explication ou une interprétation de ladite opinion.

Renseignements faisant partie du document
13(2) À partir de la date à laquelle une opposition, une explication ou une interprétation a été soumise en vertu du paragraphe (1), celle-ci fait partie du document et ne doit pas être détruite, modifiée ou retirée de celui-ci.

Correction d'erreurs de fait
13(3) Le responsable du ministère qui a la garde ou la responsabilité d'un document mentionné au paragraphe (1) y fait apporter des corrections s'il est convaincu que le document renferme une erreur ou une omission de fait.

Complaint by applicant

14 An applicant who

(a) is refused access to a record; or

(b) receives a notice of extension under subsection 11(2);

may, in person or through counsel, file a complaint in respect thereof with the Ombudsman.

Duties of Ombudsman

15(1) In addition to any other powers, duties and functions which may be conferred or imposed on the Ombudsman under this Act, the Ombudsman shall receive and investigate every complaint

(a) by an applicant about

(i) the refusal by the head of a department to give the applicant access to a record, or

(ii) an extension under section 11 of the 30 day limit for responding to the application; and

(b) by any person about the adequacy or availability of the Access Guide required to be published under this Act.

Complaint by Ombudsman

15(2) Where the Ombudsman is satisfied that there are reasonable grounds to investigate any matter referred to in subsection (1), the Ombudsman may initiate a complaint about the matter, and subject to subsection 30(4) the provisions of this Act apply with necessary modifications to a complaint initiated by the Ombudsman.

Complaints in prescribed form

15(3) Every complaint shall be in prescribed form.

Powers of investigation

16(1) Upon receiving or initiating a complaint, the Ombudsman shall forthwith investigate the complaint and for this purpose the Ombudsman has, subject to this Act, all the powers of a commissioner appointed under Part V of The Manitoba Evidence Act; but sections 85 and 86 of The Manitoba Evidence Act do not apply to any investigation conducted by the Ombudsman under this Act.

S.M. 1988-89, c. 13, s. 12.

Plainte déposée par le demandeur

14 Un demandeur peut, en personne ou par l'intermédiaire d'un avocat, déposer une plainte auprès de l'Ombudsman :

a) si la communication d'un document lui est refusée; ou

b) s'il reçoit un avis de prorogation en application du paragraphe 11(2).

Fonctions de l'Ombudsman

15(1) En plus des autres pouvoirs et fonctions conférés à l'Ombudsman en vertu de la présente loi, celui-ci doit recevoir toutes les plaintes et faire enquête sur toutes les plaintes qui sont déposées :

a) par un demandeur relativement :

(i) au refus du responsable d'un ministère de lui accorder la communication d'un document, ou

(ii) à une prorogation du délai de 30 jours, prévue en application de l'article 11, afin de donner suite à la demande; et

b) par toute personne relativement à la pertinence ou à la disponibilité du guide d'accès à l'information devant être publié en vertu de la présente loi.

Plainte émanant de l'Ombudsman

15(2) L'Ombudsman peut prendre l'initiative d'une plainte relative à une question prévue au paragraphe (1), s'il est convaincu qu'une enquête devrait être menée relativement à une telle question. Sous réserve du paragraphe 30(4), les dispositions de la présente loi s'appliquent, avec les adaptations nécessaires, à une plainte émanant de l'Ombudsman.

Forme des plaintes

15(3) Chaque plainte doit être déposée en la forme prescrite.

Pouvoirs relatifs à la tenue d'une enquête

16(1) L'Ombudsman, après avoir reçu une plainte ou en avoir pris l'initiative, doit procéder immédiatement à l'instruction de celle-ci et à cette fin, il possède, sous réserve de la présente loi, tous les pouvoirs d'un commissaire nommé en vertu de la Partie V de la Loi sur la preuve au Manitoba. Cependant, les articles 85 et 86 de cette loi ne s'appliquent pas à une enquête menée par l'Ombudsman en vertu de la présente loi.

L.M. 1988-89, c. 13, art. 12.

Delegation of powers

16(2) The Ombudsman may delegate to any person the authority to investigate a complaint, and any person so authorized may exercise the powers, and shall perform the duties and functions, assigned to the Ombudsman under this Act; but the Ombudsman shall not delegate to any other person the duty referred to in section 55.

Right of entry

16(3) Notwithstanding any other Act of the Legislature or any privilege under the law of evidence, the Ombudsman has, for the purpose of investigating a complaint, the right

(a) to enter any office of a department and examine any record in the custody of the department; and

(b) to converse in private with any officer or employee of a department.

Reasons for refusal

17(1) Where a complaint relates to a presumed refusal of access under section 8 or subsection 11(4), the Ombudsman shall, immediately upon beginning the investigation, request the head of the department involved in the complaint to give the applicant written notice of the reasons for the refusal to give access.

Contents of notice

17(2) Forthwith upon receiving the request from the Ombudsman under subsection (1), the head shall send to the applicant a written notice stating

(a) in the case of a record which the department claims does not exist or cannot be located, that the record does not exist or cannot be located;

(b) in the case of a record which does exist and can be located, the specific provision of this Act upon which the refusal to give access is based.

Withholding information from Ombudsman

18 No person shall

(a) withhold from the Ombudsman any record required by the Ombudsman for the purpose of an investigation; or

(b) refuse to furnish any information required by the Ombudsman for the purpose of an investigation.

Délégation de pouvoirs

16(2) L'Ombudsman peut déléguer le pouvoir d'instruction des plaintes. Les délégués peuvent exercer les pouvoirs de l'Ombudsman qui sont prévus par la présente loi et exécutent les fonctions de celui-ci. Cependant, l'Ombudsman ne délègue à aucune autre personne la fonction prévue à l'article 55.

Droit de pénétrer dans les bureaux d'un ministère

16(3) Par dérogation à toute autre loi de la Législature ou à toute immunité reconnue par le droit de la preuve, l'Ombudsman a le droit, pour les besoins d'instruction d'une plainte :

a) de pénétrer dans tout bureau d'un ministère et d'examiner les documents sous la garde du ministère; et

b) de s'entretenir en privé avec un cadre ou un employé d'un ministère.

Raisons du refus

17(1) Lorsqu'une plainte se rapporte à un refus présumé de communication d'un document en vertu de l'article 8 ou du paragraphe 11(4), l'Ombudsman doit, aussitôt après le début de l'enquête, demander au responsable du ministère qui s'occupe de la plainte de donner au demandeur un avis écrit indiquant les raisons d'un tel refus.

Contenu du refus

17(2) Immédiatement après la réception de la demande de l'Ombudsman en vertu du paragraphe (1), le responsable doit envoyer au demandeur un avis écrit indiquant :

a) le fait que le document n'existe pas ou ne peut être trouvé lorsque, selon le ministère, il s'agit d'un tel cas;

b) la disposition précise de la présente loi sur laquelle est fondé le refus de communication de document, dans le cas d'un document qui existe et qui peut être trouvé.

Refus de communiquer des informations à l'Ombudsman

18 Nul ne doit :

a) refuser à l'Ombudsman un document qu'il exige pour les besoins d'une enquête; ou

b) refuser de fournir une information que l'Ombudsman exige pour les besoins d'une enquête.

Investigations in private.
19 The Ombudsman shall conduct every investigation in private.

Right to make representations.
20 In the course of an investigation, the Ombudsman shall give to the complainant and to the head of the department, if any, involved in the complaint a reasonable opportunity to make representations respecting the complaint.

Secrecy.
21(1) The Ombudsman shall maintain secrecy in respect of all matters which come to the knowledge of the Ombudsman in the course of any investigation.

Disclosure in certain situations.
21(2) Notwithstanding subsection (1), the Ombudsman may disclose

(a) in the course of an investigation, any matter which the Ombudsman considers necessary to disclose in order to facilitate the investigation;

(b) in a report prepared under this Act, any matter which the Ombudsman considers necessary to disclose in order to establish grounds for the findings and recommendations in the report; and

(c) in the course of a prosecution for an offence under this Act, any matter required for purposes of the prosecution.

Due regard for exemptions.
21(3) When making a disclosure under subsection (2), the Ombudsman shall have due regard for the exemptions in this Act and shall take every reasonable precaution in order to avoid disclosure of any exempt information.

Defence under other Acts.
22 No person is guilty of an offence against any other Act of the Legislature by reason of complying with any request or requirement by the Ombudsman to furnish information or produce a record for the purpose of an investigation.

Enquêtes menées en privé
19 Toutes les enquêtes menées par l'Ombudsman sont privées.

Droit de présenter des observations
20 Au cours d'une enquête, l'Ombudsman doit donner au plaignant et au responsable du ministère concernés par la plainte, la possibilité de présenter leurs observations relativement à celle-ci.

Secret
21(1) L'Ombudsman est tenu au secret à l'égard de toutes les questions dont il prend connaissance dans le cadre d'une enquête.

Divulgation dans certains cas
21(2) Par dérogation au paragraphe (1), l'Ombudsman peut divulguer les renseignements suivants :

a) dans le cadre d'une enquête, toute question qu'il juge nécessaire de divulguer afin de faciliter l'enquête;

b) dans un rapport préparé en vertu de la présente loi, toute question qu'il juge nécessaire de divulguer afin de motiver les conclusions et les recommandations contenues dans le rapport;

c) dans le cadre d'une poursuite intentée pour une infraction à la présente loi, toute question requise pour les besoins de la poursuite

Prise en considération des exemptions
21(3) L'Ombudsman qui divulgue des renseignements en vertu du paragraphe (2) doit tenir compte des exemptions prévues à la présente loi et prendre toutes les précautions raisonnables afin d'éviter la divulgation de renseignements extraits d'un document.

Défense en vertu d'autres lois
22 Une personne n'est pas coupable d'une infraction à une autre loi de la Législature du fait qu'elle s'est conformée à une requête ou à une exigence de l'Ombudsman lui demandant de fournir des informations ou de produire un document aux fins d'une enquête.

Restrictions on evidence.

23 Except in a prosecution for an offence under this Act,

(a) no statement made in the course of an investigation by the Ombudsman is admissible against any person in a court or in any other proceeding;

(b) no report made by the Ombudsman under subsection 25(1) or 27(1), and no notification given by the Ombudsman under subsection 29(2), is admissible in a court or in any other proceeding; and

(c) the Ombudsman shall not be called to give evidence in a court or in any other proceeding concerning any matter which comes to the knowledge of the Ombudsman in the course of any investigation.

Report re Access Guide.

24 Where a complaint relates to the adequacy or availability of the Access Guide required to be published under this Act, the Ombudsman shall, upon completing the investigation, send to the complainant and to the designated minister a report containing the findings of the investigation and the recommendations, if any, which the Ombudsman considers appropriate in respect of the complaint.

Report re access complaint.

25(1) Where a complaint relates to

(a) the refusal by the head of a department to give an applicant access to a record; or

(b) an extension under section 11 of the 30 day limit for responding to an application;

the Ombudsman shall, upon completing the investigation, send to the applicant and to the head a report containing the findings of the investigation and the recommendations, if any, which the Ombudsman considers appropriate in respect of the complaint.

Notification re appeal right.

25(2) Where the complaint relates to the refusal by the head of a department to give an applicant access to a record and where the Ombudsman finds that the complaint is not justified, the Ombudsman shall state in the report

Restriction apportée à la preuve

23 Sauf dans les cas où une personne est poursuivie pour une infraction à la présente loi :

a) une déclaration faite dans le cadre d'une enquête menée par l'Ombudsman n'est pas admissible contre une personne devant un tribunal ni dans aucune autre procédure;

b) aucun rapport préparé par l'Ombudsman en vertu du paragraphe 25(1) ou 27(1) et aucun avis donné par celui-ci en vertu du paragraphe 29(2) ne sont recevables devant un tribunal ou dans toute autre instance; et

c) l'Ombudsman ne doit pas être appelé à témoigner devant un tribunal ni dans aucune autre procédure, à l'égard de toute question dont il prend connaissance dans le cadre d'une enquête.

Rapport concernant le guide d'accès à l'information

24 Si une plainte se rapporte à la pertinence ou à la disponibilité du guide d'accès à l'information devant être publié en vertu de la présente loi, l'Ombudsman doit, après avoir terminé son enquête, envoyer au plaignant et au ministre désigné un rapport contenant les conclusions de cette enquête ainsi que les recommandations qu'il juge indiquées à l'égard de la plainte.

Rapport concernant une plainte

25(1) Si une plainte se rapporte :

a) au refus du responsable d'un ministère d'accorder à un demandeur la communication d'un document; ou

b) à une prorogation du délai de 30 jours, prévue à l'article 11, afin de donner suite à une demande,

l'Ombudsman doit, après avoir terminé son enquête, envoyer au demandeur et au responsable un rapport contenant les conclusions de cette enquête ainsi que les recommandations qu'il juge indiquées à l'égard de la plainte.

Avis concernant le droit d'appel

25(2) Si la plainte se rapporte au refus du responsable d'un ministère d'accorder à un demandeur la communication d'un document et que l'Ombudsman ne conclut pas au bien-fondé de la plainte, ce dernier doit indiquer dans le rapport

sent to the applicant under subsection (1)

(a) the right of the applicant to appeal to the court for access to the record; and

(b) the time limit under subsection 30(1) for filing an appeal.

Response by head.

26 Where the report of the Ombudsman under subsection 25(1) contains any recommendations in respect of the complaint, the head of the department shall, within 14 days of receiving the report, send to the Ombudsman a written response indicating

(a) any action which the head has taken, or proposes to take, to implement the recommendations contained in the report; or

(b) reasons why the head refuses to take action to implement the recommendations contained in the report.

Report indicating departmental response.

27(1) Upon receiving the response of the head, the Ombudsman shall send to the applicant a report indicating the nature of the response.

Where access refused.

27(2) Where the report of the Ombudsman under subsection 25(1) recommends that the head give the applicant access to a record, and where the response of the head indicates that the head refuses to give the applicant access to the record, the Ombudsman shall state in the report sent to the applicant under subsection (1)

(a) the opinion of the Ombudsman as to whether or not the response of the head is justified by the provisions of this Act;

(b) the right of the applicant to appeal to the court for access to the record; and

(c) the time limit under subsection 30(1) for filing an appeal.

qui est envoyé au demandeur en application du paragraphe (1) :

a) le droit du demandeur d'interjeter appel devant la Cour, afin d'obtenir la communication du document; et

b) le délai prévu au paragraphe 30(1) pour interjeter appel.

Réponse du responsable

26 Lorsque le rapport de l'Ombudsman, envoyé en application du paragraphe 25(1), contient des recommandations à l'égard de la plainte, le responsable du ministère doit, dans les 14 jours de la réception de ce rapport, faire parvenir à l'Ombudsman une réponse écrite indiquant :

a) les mesures qu'il a prises ou qu'il a l'intention de prendre afin de donner suite aux recommandations contenues dans le rapport; ou

b) les raisons pour lesquelles il refuse de prendre des mesures afin de donner suite aux recommandations contenues dans le rapport.

Rapport indiquant la réponse du ministère

27(1) Dès que l'Ombudsman reçoit la réponse du responsable, il doit envoyer au demandeur un rapport indiquant la nature de cette réponse.

Refus de communication d'un document

27(2) Si le rapport de l'Ombudsman, envoyé en application du paragraphe 25(1), recommande que le responsable accorde au demandeur la communication d'un document et que la réponse du responsable indique qu'il refuse au demandeur une telle communication, l'Ombudsman doit indiquer dans le rapport qui est envoyé au demandeur en application du paragraphe (1) :

a) s'il est d'avis que la réponse du responsable est justifiée ou non par les dispositions de la présente loi;

b) le droit du demandeur d'interjeter appel devant la Cour, afin d'obtenir la communication du document; et

c) le délai fixé en vertu du paragraphe 30(1) pour interjeter appel.

Decision to allow access.
28 Where in the response under section 26, or at any other time after the filing of a complaint, the head of the department involved in the complaint indicates that the applicant will be given access to a record referred to in the complaint, the head shall, within 10 days, give the applicant access to the record.

Informal resolution of complaint.
29(1) Notwithstanding the procedures prescribed in sections 24 to 27, the Ombudsman may, in the course of or upon completing an investigation, undertake such other procedures as the Ombudsman deems appropriate for the purpose of resolving the complaint informally to the satisfaction of the parties thereto and in a manner consistent with the spirit of this Act.

Notification of appeal right.
29(2) Where the Ombudsman attempts but is unable to resolve in accordance with subsection (1) a complaint which relates to the refusal by the head of a department to give an applicant access to a record, the Ombudsman shall in writing notify the applicant of

(a) the right of the applicant to appeal to the court for access to the record; and

(b) the time limit under subsection 30(1) for filing an appeal.

Appeal by applicant.
30(1) An applicant who is refused access to a record and who has filed a complaint in respect thereof with the Ombudsman may appeal the refusal of access to the court by filing an originating notice of motion within 30 days of receiving the report of the Ombudsman under subsection 25(1) or subsection 27(1), or the notification referred to in subsection 29(2), as the case may be.

Extension of time for filing.
30(2) Prior to, or after, the expiry of the 30 day period referred to in subsection (1), and where special circumstances warrant, the court may extend the time for filing the appeal.

Décision d'accorder la communication d'un document
28 Le responsable du ministère concerné par la plainte doit accorder au demandeur la communication du document lorsqu'il indique, dans la réponse envoyée en application de l'article 26 ou à tout autre moment après le dépôt d'une plainte, que le demandeur obtiendra la communication d'un document mentionné dans la plainte. La communication du document est accordée dans les 10 jours suivant la réponse ou le dépôt de la plainte.

Règlement de la plainte sans formalités
29(1) Par dérogation aux procédures prévues aux articles 24 à 27, l'Ombudsman qui complète ou a complété une enquête peut entreprendre les autres procédures qu'il estime opportunes afin que la plainte soit réglée sans formalités, à la satisfaction des parties et d'une manière compatible avec l'esprit de la présente loi.

Avis du droit d'appel
29(2) L'Ombudsman qui tente de résoudre, conformément au paragraphe (1), une plainte se rapportant au refus du responsable d'un ministère d'accorder au demandeur la communication d'un document, mais qui est incapable de le faire, doit aviser par écrit le demandeur :

a) de son droit d'interjeter appel devant la Cour, afin d'obtenir la communication du document;

b) du délai fixé au paragraphe 30(1) pour interjeter appel.

Appel interjeté par le demandeur
30(1) Un demandeur qui s'est vu refuser la communication d'un document et qui a déposé une plainte à cet effet auprès de l'Ombudsman peut interjeter appel du refus devant la Cour, en déposant un avis introductif de requête dans un délai de 30 jours suivant la réception du rapport de l'Ombudsman, en application du paragraphe 25(1) ou 27(1) ou suivant l'avis prévu au paragraphe 29(2).

Prorogation du délai afin d'interjeter appel
30(2) La Cour peut proroger le délai pour interjeter appel avant ou après la fin du délai de 30 jours mentionné au paragraphe (1), lorsque des circonstances spéciales justifient la prorogation.

Head is respondent.
30(3) The head of the department involved in the complaint is the respondent in an appeal under this section.

Ombudsman not to be party.
30(4) The Ombudsman shall not be a party to an appeal under this section, and the Ombudsman shall not appeal any determination or decision made in respect of a complaint initiated by the Ombudsman under subsection 15(2).

Summary disposition.
31 The court may receive evidence by affidavit and may decide the appeal in a summary manner.

Production of records.
32 Notwithstanding any other Act of the Legislature or any privilege under the law of evidence, the court may, for purposes of disposing of an appeal under this Act, order production of any record in the custody or under the control of a department for examination by the court.

Procedures to avoid disclosure.
33 In disposing of an appeal under this Act, the court shall take every reasonable precaution, including, where appropriate, receiving representations ex parte and conducting hearings in camera, in order to avoid disclosure of any exempt information.

Burden of proof on department.
34 In any appeal under this Act, the burden of proof is on the head of the department to establish that the applicant has no right of access to the record under this Act.

Powers of court.
35(1) Upon completion of the appeal hearing, the court may, subject to this section,

Intimé
30(3) La personne responsable du ministère qui est concerné par la plainte est l'intimée dans un appel interjeté en application du présent article.

Ombudsman
30(4) L'Ombudsman n'est pas une partie à l'appel en vertu du présent article et ne doit pas interjeter appel d'une décision rendue à l'égard d'une plainte dont il a pris l'initiative en application du paragraphe 15(2).

Décision sommaire
31 La Cour peut recevoir la preuve au moyen d'un affidavit et statuer sur l'appel de façon sommaire.

Production de documents
32 Par dérogation à toute autre loi de la Législature ou à toute immunité reconnue par le droit de la preuve, la Cour peut ordonner, à des fins d'examen, la production de tout document sous la garde ou la responsabilité d'un ministère, afin de statuer sur un appel interjeté en vertu de la présente loi.

Procédures afin d'éviter la divulgation de renseignements
33 Lorsque la Cour statue sur un appel interjeté en vertu de la présente loi, elle doit prendre toutes les précautions possibles, notamment, si c'est indiqué, par l'audition d'arguments en l'absence d'une partie et la tenue d'audiences à huis clos, afin d'éviter la divulgation de renseignements privilégiés.

Charge de la preuve incombant au responsable
34 Dans le cas d'un appel interjeté en vertu de la présente loi, il incombe au responsable du ministère d'établir que le demandeur n'a pas droit à la communication d'un document en vertu de la présente loi.

Pouvoirs de la Cour
35(1) Dès que l'audition de l'appel est complétée et sous réserve du présent article, la Cour peut :

(a) order the head of the department to give the applicant access to the record, or refuse to make the order; or
(b) make such other order as the court deems appropriate.

Where record within exemption.
35(2) Where the court finds that the record in question falls within an exemption, the court shall not order the head to give the applicant access to the record, regardless of whether the exemption in question requires or merely authorizes the head to refuse to give the applicant access to the record.

Costs in certain cases.
35(3) Where the court is of the opinion that the appeal has raised an important new principle concerning the operation of this Act, the court shall order that costs be awarded to the applicant in any event of the cause.

No further appeal.
36 The decision of the court under section 35 is final and binding and there is no appeal therefrom.

Severability.
37 Notwithstanding any other provision of this Act, where the court finds that a record contains exempt information, the court shall order the head of the department to give the applicant access to all the information in the record which is not exempt and which can reasonably be severed from the exempt information.

Cabinet confidences.
38(1) Subject to subsection (2), the head of a department shall refuse to give access to any record which discloses a confidence of the Cabinet, including but not restricted to a record which discloses
(a) an agenda prepared for a Cabinet meeting; or
(b) policy analysis or similar briefing material prepared for consideration by the Cabinet; or

a) ordonner au responsable du ministère d'accorder au demandeur la communication du document ou refuser de rendre une telle ordonnance; ou
b) rendre une autre ordonnance qu'elle estime appropriée.

Document faisant l'objet d'une exemption
35(2) Lorsque la Cour conclut que le document visé au paragraphe (1) fait l'objet d'une exemption, elle ne peut ordonner au responsable d'accorder au demandeur la communication du document, que l'exemption en question exige que le responsable refuse d'accorder au demandeur la communication du document ou qu'elle ne fasse que l'autoriser à refuser cette communication.

Frais et dépens accordés dans certains cas
35(3) Lorsque la Cour estime que l'appel a soulevé un principe important et nouveau relativement à l'application de la présente loi, elle doit ordonner que les frais et dépens soient accordés au demandeur, en tout état de cause.

Décision définitive
36 La décision de la Cour, rendue en application de l'article 35, est définitive et exécutoire.

Renseignements non privilégiés extraits d'un document
37 Par dérogation à toute autre disposition de la présente loi, si la Cour est d'avis qu'un document contient des renseignements privilégiés, elle doit ordonner au responsable du ministère d'accorder au demandeur la communication de tous les renseignements non privilégiés qui sont contenus dans le document et qui peuvent être extraits sans problèmes sérieux.

Documents confidentiels du cabinet
38(1) Sous réserve du paragraphe (2), le responsable d'un ministère doit refuser la communication de tout document confidentiel du cabinet, notamment d'un document qui divulgue :
a) un ordre du jour préparé en vue d'une réunion du cabinet;
b) une analyse politique ou un document similaire soumis à l'examen du cabinet;

(c) a proposal or recommendation prepared, or reviewed and approved, by a minister for presentation to the Cabinet; or

(d) a communication or discussion between ministers on a matter relating to the making of a government decision or the formulation of government policy.

Right of access preserved.

38(2) Subject to the other exemptions in this Act, the head of a department shall give access to a record which discloses a confidence of the Cabinet where

(a) the record is more than 30 years old; or

(b) the Cabinet for which, or in respect of which, the record has been prepared consents to access being given.

Policy opinions, advice or recommendations.

39(1) Subject to subsection (4), the head of a department may refuse to give access to any record which discloses

(a) an opinion, advice or a recommendation submitted by an officer or employee of a department, or a member of the staff of a minister, to a department or to a minister for consideration in

(i) the formulation of a policy, or

(ii) the making of a decision, or

(iii) the development of a negotiating position of or by the department or the government; or

(b) a plan relating to the administration of a department, including a plan relating to the management of personnel, which has not yet been implemented; or

(c) the contents of any draft enactment.

Limitation on exemption.

39(2) Clauses (1)(a) and (b) do not apply to

(a) an environmental impact statement or a similar statement prepared for a department which is responsible for monitoring environmental quality; or

(b) a report of a test carried out on a product for the purpose of testing government equipment or preparing a consumer test report; or

c) une proposition ou une recommandation qu'un ministre a préparée ou qu'il a révisée et approuvée, afin de la soumettre au cabinet; ou

d) une communication ou une discussion entre ministres sur une question liée à la prise d'une décision du gouvernement ou à la formulation de sa politique.

Droit de communication maintenu

38(2) Sous réserve des autres exemptions prévues à la présente loi, le responsable d'un ministère doit accorder la communication d'un document confidentiel du cabinet, lorsque :

a) le document date de plus de 30 ans; ou

b) le Cabinet à l'égard duquel le document a été préparé consent à la communication de celui-ci.

Opinions, avis ou recommandations politiques

39(1) Sous réserve du paragraphe (4), le responsable d'un ministère peut refuser la communication d'un document qui divulgue :

a) une opinion, un avis ou une recommandation soumis à un ministère ou à un ministre par un cadre ou un employé d'un ministère ou par un membre du personnel d'un ministre, afin d'être examiné relativement à :

(i) la formulation d'une politique,

(ii) une décision à être prise, ou

(iii) la préparation portant sur des positions envisagées dans le cadre de négociations menées par le ministère ou le gouvernement; ou

b) un projet relatif à l'administration d'un ministère, notamment un projet concernant la gestion du personnel, qui n'a pas encore été mis en oeuvre; ou

c) le contenu d'un avant-projet d'un texte législatif.

Restriction apportée aux exemptions

39(2) Les alinéas (1)a) et b) ne s'appliquent pas :

a) à un compte rendu de l'impact sur l'environnement ou à un compte rendu semblable qui est préparé pour un ministère dont relève le contrôle de la qualité écologique;

b) à un rapport d'une analyse effectuée sur un produit afin de vérifier le matériel appartenant au gouvernement ou afin de préparer un rapport d'une analyse portant sur la consommation;

(c) the results of scientific or technical research undertaken in connection with the formulation of a policy proposal; or

(d) an instruction or guideline issued to the officers or employees of a department, or a substantive rule or statement of policy which has been adopted by a department, for the purpose of interpreting an enactment or administering a departmental program or activity which affects the public; or

(e) an account of, or a statement of the reasons for, a decision which is made in the exercise of a discretionary power or an adjudicative function and which affects the rights of the applicant; or

(f) a report prepared by a consultant who was not, at the time the report was prepared, an officer or employee of a department or a member of the staff of a minister.

c) aux résultats de recherches scientifiques ou techniques menées relativement à la formulation d'une proposition relative à une politique;

d) à des directives ou à un guide donnés aux cadres ou aux employés d'un ministère, ou à une règle de fond ou à une déclaration de principe adoptée par un ministère, afin d'interpréter un texte législatif ou de diriger un programme ministériel ou des activités de même nature, lesquels concernent le public;

e) à un compte rendu d'une décision qui est rendue dans l'exercice d'un pouvoir discrétionnaire ou d'une fonction judiciaire ou quasi-judiciaire et qui touche les droits du demandeur, ou à un exposé des raisons d'une telle décision; ou

f) à un rapport préparé par un conseiller qui n'était pas un cadre ou un employé d'un ministère ou un membre du personnel d'un ministre au moment où le rapport a été préparé.

Meaning of "report".
39(3) The term "report" in clause (2)(f) includes an evaluation of any departmental program of a non-commercial nature, but does not include an appraisal of the performance of any specific officer or employee of a department who is or was involved in administering a program.

Sens de l'expression "rapport"
39(3) L'expression "rapport", à l'alinéa (2)f), s'entend notamment d'une évaluation d'un programme ministériel de nature non commerciale, mais non d'une évaluation de l'exercice des fonctions d'un cadre ou d'un employé particulier d'un ministère qui est ou était engagé dans l'administration d'un programme.

Right of access preserved.
39(4) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where the record is more than 30 years old.

Droit de communication maintenu
39(4) Sous réserve des autres exemptions à la présente loi, le responsable d'un ministère doit accorder la communication d'un document décrit au paragraphe (1), lorsque ledit document date de plus de 30 ans.

Law enforcement and legal proceedings.
40(1) The head of a department may refuse to give access to any record the disclosure of which could reasonably be expected

(a) to be injurious either to the enforcement of an enactment or to the conduct of an investigation under an enactment; or

(b) to facilitate the commission of an offence or to threaten the security of a correctional institution or other building, a computer or communications system, or any other property or system; or

Respect de la loi et procédures légales
40(1) Le responsable d'un ministère peut refuser la communication de tout document dont la divulgation risquerait vraisemblablement :

a) de nuire aux activités destinées à faire respecter les textes législatifs ou de nuire au déroulement d'une enquête menée sous le régime de ces textes;

b) de faciliter la perpétration d'une infraction ou de menacer la sécurité d'un établissement pénitentiaire ou d'un autre bâtiment, d'un réseau ou système informatisé ou de communications, ou de tout autre bien, réseau ou système;

(c) to violate solicitor-client privilege; or
(d) to be injurious to the conduct of existing or anticipated legal proceedings.

Limitation on exemption.
40(2) Subsection (1) does not apply to a record which

(a) discloses the use of investigative or enforcement techniques or procedures which are contrary to law; or
(b) reveals that the scope of any law enforcement investigation has exceeded the limits of the law; or
(c) provides a general outline of the structure or programs of a law enforcement agency; or
(d) reports, by means of statistical analysis or otherwise, on the degree of success achieved in a law enforcement program.

Protection of personal privacy.
41(1) Subject to subsections (3) and (5), the head of a department shall refuse to give access to any record the disclosure of which would constitute an unreasonable invasion of the privacy of a third party, including but not restricted to a record which discloses

(a) personal details of the educational, medical, criminal, employment or family history of the third party; or
(b) personal details of a taxation matter, financial transaction or other pecuniary matter in which the third party is or has been involved; or
(c) the identity of a third party who has supplied information in confidence to a department for any purpose related to the administration or enforcement of an enactment.

Limitation on exemption.
41(2) Subsection (1) does not apply to a record which

(a) discloses the classification, salary range and benefits, or employment responsibilities of a third party who is or was an officer or employee of a department or a member of the staff of a minister; or

c) de violer le secret professionnel de l'avocat; ou
d) de nuire au déroulement de procédures légales actuelles ou envisagées.

Restriction apportée aux exemptions
40(2) Le paragraphe (1) ne s'applique pas à un document :

a) qui divulgue l'utilisation de techniques ou de procédures d'enquête ou d'exécution contraires à la loi;
b) qui révèle que la portée d'une enquête relative à la mise en application d'une loi a outrepassé les limites de la loi;
c) qui fournit une idée générale de la structure ou des programmes d'un organisme de mise en application des lois; ou
d) qui rend compte, au moyen d'analyses statistiques ou autrement, du degré de succès obtenu dans le cadre d'un programme de mise en application des lois.

Protection de la vie privée
41(1) Sous réserve des paragraphes (3) et (5), le responsable d'un ministère doit refuser la communication d'un document dont la divulgation constituerait une atteinte déraisonnable à la vie privée d'un tiers, notamment un document qui divulgue :

a) les renseignements personnels relatifs à l'éducation, au dossier médical, au casier judiciaire, aux antécédents professionnels ou familiaux du tiers;
b) les renseignements personnels relatifs à une affaire fiscale et à une opération ou une autre affaire financière auxquelles le tiers participe ou a participé; ou
c) l'identité d'un tiers qui a fourni à un ministère, à titre confidentiel, des renseignements pour des fins se rapportant à la mise en application ou à l'exécution d'un texte législatif.

Restriction apportée aux exemptions
41(2) Le paragraphe (1) ne s'applique pas à un document :

a) qui divulgue la classification, l'échelle salariale et les avantages sociaux ou les attributions d'emploi d'un tiers qui est ou qui était un cadre ou un employé d'un ministère ou un membre du personnel d'un ministre;

(b) discloses financial or other details of a contract for personal services between a third party and a department; or

(c) discloses details of a licence or permit, or a similar discretionary financial benefit, conferred on a third party by a department or minister, but only where

(i) the third party represents 1% or more of all persons and organizations in Manitoba receiving a similar benefit, and

(ii) the value of the benefit to the third party represents 1% or more of the total value of similar benefits provided to other persons and organizations in Manitoba.

b) qui divulgue des renseignements, notamment des renseignements financiers, relatifs à un contrat de prestation de services personnels conclu entre un tiers et un ministère; ou

c) qui divulgue des renseignements relatifs à la délivrance d'une licence ou d'un permis ou relatif à des avantages financiers discrétionnaires de même nature, accordés à un tiers par un ministère ou un ministre, uniquement :

(i) lorsque le tiers représente au moins 1% de toutes les personnes et organisations du Manitoba qui reçoivent un avantage semblable, et

(ii) lorsque la valeur de l'avantage accordé au tiers représente au moins 1% de la valeur totale des avantages semblables accordés à d'autres personnes et organisations du Manitoba.

Right of access preserved.

41(3) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where

(a) the third party consents to access being given; or

(b) the record is publicly available; or

(c) the third party is an individual who has been dead for more than 10 years.

Droit de communication maintenu

41(3) Sous réserve des autres exemptions prévues à la présente loi, le responsable d'un ministère doit accorder la communication d'un document décrit au paragraphe (1), lorsque :

a) le tiers qui est concerné y consent;

b) le public a accès au document; ou

c) le tiers est décédé depuis plus de 10 ans.

Access with consent of third party.

41(4) Where an applicant is entitled to be given access to a record described in subsection (1) by virtue of the consent of the third party, the head of the department which has custody or control of the record may

(a) prior to giving access to the applicant, require a written acknowledgement or other evidence of informed consent from the third party; and

(b) comply with the requirement to give access by giving access directly to the third party rather than the applicant.

Consentement du tiers

41(4) Lorsqu'un demandeur a droit de recevoir la communication d'un document décrit au paragraphe (1) en vertu du consentement du tiers, le responsable du ministère qui a la garde ou la responsabilité du document peut :

a) avant d'accorder la communication du document au demandeur, exiger du tiers une attestation écrite ou une autre preuve de son consentement éclairé; et

b) se soumettre à l'obligation de communication d'un document en accordant directement la communication de celui-ci au tiers plutôt qu'au demandeur.

Access for research purposes.

41(5) Subject to the other exemptions in this Act, the head of a department may give any person or organization access to a record described in subsection (1) for bona fide research or statistical purposes if

Communication à des fins de recherche

41(5) Sous réserve des autres exemptions prévues à la présente loi, le responsable d'un ministère peut accorder à toute personne ou organisation la communication d'un document décrit au paragraphe (1), à des fins de recherche ou de statistique de bonne foi :

(a) the head is satisfied that the research or statistical purpose cannot reasonably be achieved unless the record is provided in a form which identifies the third party; and

(b) the head obtains from the person or organization a written undertaking not to disclose the contents of the record in any form which could reasonably be expected to identify the third party.

Commercial information belonging to third party.

42(1) Subject to this section, the head of a department shall refuse to give access to any record

(a) which discloses a trade secret of a third party; or

(b) which discloses financial, commercial, scientific or technical information supplied to a department by a third party on a confidential basis and treated consistently as confidential information by the third party; or

(c) the disclosure of which could reasonably be expected to

(i) result in significant financial loss or gain to a third party, or

(ii) prejudice the competitive position of a third party, or

(iii) interfere with contractual or other negotiations of a third party.

Right of access preserved.

42(2) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where

(a) the record discloses the final results of a product or environmental test conducted by or on behalf of a department, unless the test was conducted for a fee paid by the third party, or

(b) the third party consents to access being given; or

(c) the record is publicly available.

Access with consent of third party.

42(3) Where an applicant is entitled to be given access to a record described in subsection (1) by virtue of the consent of the third party, the head of the department which has custody or control of the record may

a) si le responsable est convaincu que les fins de recherche ou de statistique ne peuvent être normalement accomplies que si le document est fourni sous une forme qui permette l'identification du tiers; et

b) si la personne ou l'organisation s'engage par écrit auprès du responsable à ne pas divulguer le contenu du document tant que la forme de celui-ci risque vraisemblablement de permettre l'identification du tiers.

Renseignements commerciaux appartenant à un tiers

42(1) Sous réserve du présent article, le responsable d'un ministère doit refuser d'accorder la communication d'un document :

a) qui divulgue un secret industriel d'un tiers;

b) qui divulgue des renseignements financiers, commerciaux, scientifiques ou techniques fournis confidentiellement à un ministère par un tiers et qui sont traités comme des renseignements confidentiels par ce tiers; ou

c) dont la divulgation risquerait vraisemblablement :

(i) de causer des pertes ou profits financiers considérables à un tiers, ou

(ii) de nuire à la compétitivité du tiers, ou

(iii) d'entraver des négociations menées par un tiers en vue de contrats ou à d'autres fins.

Droit de communication maintenu

42(2) Sous réserve des autres exemptions prévues à la présente loi, le responsable d'un ministère doit accorder la communication d'un document décrit au paragraphe (1), lorsque :

a) le document divulgue les résultats définitifs d'essais de produits ou d'essais d'environnement effectués par un ministère ou pour son compte, sauf si les essais ont été effectués à titre onéreux et payés par le tiers;

b) le tiers qui est concerné y consent; ou

c) le public a accès aux documents.

Consentement du tiers

42(3) Lorsqu'un demandeur a droit de recevoir la communication d'un document décrit au paragraphe (1) en vertu du consentement du tiers, le responsable du ministère qui a la garde ou la responsabilité du document peut :

(a) prior to giving access to the applicant, require a written acknowledgement or other evidence of informed consent from the third party; and

(b) comply with the requirement to give access by giving access directly to the third party rather than the applicant.

Disclosure in public interest.

42(4) Subject to subsections (5) to (7) and the other exemptions in this Act, the head of a department may give access to a record described in subsection (1) where the private interest of the third party in non-disclosure is clearly outweighed by the public interest in disclosure for purposes of

(a) health, safety or environmental protection;

(b) improved competition; or

(c) government regulation of undesirable trade practices.

Notification to third party and applicant.

42(5) Prior to giving access to a record under subsection (4), the head shall

(a) notify the third party of the decision to give access and give the third party a reasonable opportunity to make representations respecting the decision, and

(b) notify the applicant that the head is acting in accordance with clause (a)

Reference to court.

42(6) Where the third party objects to the giving of access, the applicant may, within 30 days of receiving the notification referred to in clause (5)(b) or within such further time as the court may allow, apply to the court by originating notice of motion for an order authorizing the head to give the applicant access to the record; and sections 31 to 33 apply with necessary modifications to the hearing of the matter.

a) avant d'accorder la communication du document au demandeur, exiger du tiers une attestation écrite ou une autre preuve de son consentement éclairé; et

b) se soumettre à l'obligation de communication d'un document en accordant directement la communication de celui-ci au tiers plutôt qu'au demandeur.

Divulgation pour des raisons d'intérêt public

42(4) Sous réserve des paragraphes (5) à (7) et des autres exemptions prévues à la présente loi, le responsable d'un ministère peut accorder la communication d'un document décrit au paragraphe (1), lorsque des raisons d'intérêt public justifient nettement les conséquences éventuelles de la communication pour un tiers, lesquelles raisons d'intérêt public concernent :

a) la santé, la sécurité ou la protection de l'environnement;

b) le développement de la concurrence; ou

c) la réglementation du gouvernement relative aux pratiques industrielles non souhaitables.

Avis au tiers et au demandeur

42(5) Avant d'accorder la communication d'un document en application du paragraphe (4), le responsable doit :

a) aviser le tiers de la décision d'accorder une telle communication et donner à celui-ci la possibilité de faire des observations relativement à la décision; et

b) aviser le demandeur qu'il agit conformément à l'alinéa a).

Renvoi devant la Cour

42(6) Si le tiers s'oppose à la communication d'un document, le demandeur peut, dans les 30 jours de la réception de l'avis mentionné à l'alinéa (5)b) ou dans tout délai supplémentaire que la Cour peut accorder, s'adresser à celle-ci au moyen d'un avis introductif de requête afin d'obtenir une ordonnance autorisant le responsable à lui accorder la communication du document. Les articles 31 à 33 s'appliquent, avec les adaptations nécessaires, à l'audition de l'affaire.

Court decides issue.

42(7) Where the court, upon hearing an application under subsection (6), decides that the public interest in disclosure referred to in subsection (4) clearly outweighs the private interest of the third party in non-disclosure, the court shall issue an order authorizing the head to give the applicant access to the record; and the decision of the court under this subsection is final and binding and there is no appeal therefrom.

Economic interests of Manitoba.

43 The head of a department may refuse to give access to any record

(a) which discloses a trade secret of a department or the government, or

(b) which discloses innovative scientific or technical research done by an officer or employee of a department; or

(c) the disclosure of which could reasonably be expected to prejudice the competitive position of a department or the government, or to interfere with contractual or other negotiations of a department or the government; or

(d) the disclosure of which could reasonably be expected to injure significantly the financial interests of a department or the government, or to result in undue gain to any person or organization, including but not restricted to a record which discloses

(i) a contemplated change in taxes or any other source of revenue, or

(ii) a contemplated change in government borrowing, or

(iii) a contemplated change in the conditions of operation of any financial institution, stock exchange, or commodities exchange, or of any self-regulating association recognized by The Manitoba Securities Commission under any provincial enactment, or

(iv) a contemplated sale or purchase of securities, bonds or foreign or Canadian currency, or

Délivrance d'une ordonnance décidée par la Cour

42(7) Suite à l'audition d'une demande en vertu du paragraphe (6), la Cour doit délivrer une ordonnance autorisant le responsable à accorder au demandeur la communication du document, si elle conclut que des raisons d'intérêt public mentionnées au paragraphe (4) justifient nettement les conséquences éventuelles de la communication pour un tiers. La décision de la Cour, rendue en application du présent paragraphe, est définitive, exécutoire et ne peut faire l'objet d'aucun appel.

Intérêts économiques du Manitoba

43 Le responsable d'un ministère peut refuser la communication d'un document :

a) qui divulgue un secret industriel d'un ministère ou du gouvernement;

b) qui divulgue une recherche scientifique ou technique innovatrice, effectuée par un cadre ou un employé d'un ministère;

c) dont la divulgation risquerait vraisemblablement de nuire à la compétitivité d'un ministère ou du gouvernement ou d'entraver des négociations menées par un ministère ou par le gouvernement en vue de contrats ou à d'autres fins; ou

d) dont la divulgation risquerait vraisemblablement de porter un préjudice considérable aux intérêts financiers d'un ministère ou du gouvernement ou de causer des avantages injustifiés à une personne ou à une organisation. Ce document peut notamment porter sur :

(i) les projets de changement des taxes ou de toute autre source de revenu, ou

(ii) les projets de changement des emprunts du gouvernement, ou

(iii) les projets de changement dans le mode de fonctionnement des institutions financières, de la Bourse, de la Bourse de marchandises ou de toute association qui établit ses propres règles et qui est reconnue par la Commission des valeurs mobilières du Manitoba, en vertu d'un texte législatif provincial, ou

(iv) les projets de vente ou d'achat de valeurs mobilières, d'obligations ou de devises canadiennes ou étrangères, ou

(v) a contemplated sale, purchase, lease or expropriation of land or other property, or
(vi) a contemplated designation of an archaeological, historical, heritage or similar site.

Federal-provincial relations.
44 The head of a department may refuse to give access to any record the disclosure of which could reasonably be expected to be injurious to the conduct by the government of federal-provincial relations.

Information obtained in confidence.
45(1) Subject to subsection (2), the head of a department shall refuse to give access to any record obtained in confidence from
(a) the government of Canada or a department thereof; or
(b) the government of any other province or a department thereof, or
(c) a municipal or regional government, a school division or school district, or any other local authority established by or in accordance with an enactment of any province, or a department of any such local authority.

Right of access preserved.
45(2) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where the government, local authority or department from which the record was obtained
(a) consents to the giving of access; or
(b) makes the information public.

Testing or auditing procedures.
46 The head of a department may refuse to give access to any record which discloses testing or auditing procedures or techniques, or details of specific tests to be given or audits to be conducted, if the disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

(v) les projets de vente, d'achat, de bail ou d'expropriation portant sur des terrains ou d'autres biens, ou
(vi) les projets de désignation d'un site archéologique, historique, patrimonial ou d'un site de même nature.

Relations fédérales-provinciales
44 Le responsable d'un ministère peut refuser la communication d'un document dont la divulgation risquerait vraisemblablement de porter préjudice à la conduite par le gouvernement des relations fédérales-provinciales.

Renseignements obtenus à titre confidentiel
45(1) Sous réserve du paragraphe (2), le responsable d'un ministère doit refuser d'accorder la communication d'un document obtenu à titre confidentiel des entités suivantes :
a) le gouvernement du Canada ou un de ses ministères;
b) le gouvernement de toute autre province ou un de ses ministères; ou
c) une administration municipale ou régionale, une division ou un district scolaire ou toute autre autorité locale constituée en vertu d'un texte législatif d'une province, ou un bureau de cette autorité locale.

Droit de communication maintenu
45(2) Sous réserve des autres exemptions prévues à la présente loi, le responsable d'un ministère doit accorder la communication d'un document prévu au paragraphe (1) si le gouvernement, l'autorité locale ou le bureau qui a fourni le document :
a) consent à la communication; ou
b) rend les renseignements publics.

Examens ou vérifications
46 Le responsable d'un ministère peut refuser la communication d'un document qui divulgue certaines opérations, soit des essais, épreuves, examens ou vérifications ou les méthodes et techniques employées pour les effectuer, si la divulgation de celles-ci risquerait vraisemblablement de nuire à l'exploitation de ces opérations ou de fausser leurs résultats.

Material to be made public.
47 The head of a department may refuse to give access to any record which the head believes on reasonable grounds will be published or otherwise made available to the public by the government, a department or a minister within 90 days.

Third party reports.
48(1) Subject to subsection (2), the head of a department may refuse to give access to any record which was made prior to the coming into force of this section and which discloses a report prepared, or an opinion expressed, about the applicant by a third party, including a third party who is or was an officer or employee of a department or a member of the staff of a minister.

Right of access preserved.
48(2) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where the third party consents to access being given.

Excerpted summary.
48(3) Where the head refuses to give access to a record under subsection (1), the head may provide the applicant with an excerpted summary of the report or opinion of the third party.

Preparation of summary.
48(4) Where an excerpted summary is provided under subsection (3), it shall be prepared by the third party, if the third party is available and willing to do so, but otherwise it shall be prepared as directed by the head.

Physical or serious psychological harm.
49 The head of a department may refuse to give access to any record where there are reasonable grounds to believe that disclosure of the record might result in

Contenu du document devant être rendu public
47 Le responsable d'un ministère peut refuser d'accorder la communication d'un document s'il est fondé à croire que ledit document sera publié dans les 90 jours suivant la demande ou que le gouvernement, un ministère ou un ministre le mettra autrement à la disposition du public dans un tel délai.

Rapports des tiers
48(1) Sous réserve du paragraphe (2), le responsable d'un ministère peut refuser la communication d'un document qui a été préparé avant l'entrée en vigueur du présent article et qui divulgue un rapport qu'un tiers a préparé au sujet du demandeur ou une opinion qu'il a exprimée à son endroit, y compris le rapport et l'opinion d'un tiers qui est ou qui était un cadre ou un employé d'un ministère ou un membre du personnel d'un ministre.

Droit de communication maintenu
48(2) Sous réserve des autres exemptions prévues à la présente loi, le responsable d'un ministère doit accorder la communication d'un document prévu au paragraphe (1) si le tiers y consent.

Résumé extrait du rapport ou de l'opinion
48(3) Le responsable qui refuse la communication d'un document en vertu du paragraphe (1) peut fournir au demandeur un résumé extrait du rapport ou de l'opinion du tiers.

Préparation du résumé
48(4) Un résumé extrait du rapport ou de l'opinion d'un tiers, fourni en vertu du paragraphe (3), est préparé par le tiers si celui-ci est disponible et disposé à le préparer. Autrement, le rapport doit être préparé selon la manière qu'indique le responsable.

Dommages physiques ou graves troubles psychologiques
49 Le responsable d'un ministère peut refuser la communication d'un document lorsqu'il existe des motifs raisonnables permettant de croire que la divulgation du document pourrait causer :

(a) physical or serious psychological harm to the applicant or, in the case of a record which discloses information about a third party, to the third party; or

(b) physical harm to any other person.

Access Guide.

50 The designated minister shall cause to be published an Access Guide containing

(a) instructions on exercising the right of access conferred by this Act, including

(i) a summary of the procedures for submitting applications, filing complaints and making appeals,

(ii) a completed sample copy of the form prescribed for applications, and

(iii) a statement of the fees payable for access to records,

(b) a list indicating the personnel involved in the administration of this Act and appropriate departmental facilities, including

(i) the address and telephone number of each departmental office which receives applications,

(ii) the name, address and telephone number of the access officer or officers in each department, and

(iii) the physical facilities available in each department for examining records and obtaining copies of records;

(c) a description of the organizational structure of each department, including a reference to any internal indexes used by the department to manage its records;

(d) a description of the records in the custody or under the control of each department, including

(i) the title of every group or class of records,

(ii) a functional description of every group or class of records, and

(iii) details concerning the retention, disposition and, where applicable, destruction of a group or class of records as contained in the appropriate Schedule prepared and approved under The Legislative Library Act.

a) des dommages physiques ou de graves troubles psychologiques au demandeur ou à un tiers, dans le cas d'un document qui divulgue des renseignements au sujet du tiers; ou

b) des dommages physiques à toute autre personne.

Guide d'accès à l'information

50 Le ministre désigné doit faire publier un guide d'accès à l'information contenant :

a) des directives relatives à l'exercice du droit de communication accordé par la présente loi, notamment :

(i) un résumé des procédures à suivre afin de présenter une demande, de déposer une plainte et d'interjeter appel,

(ii) un modèle de la formule prescrite relativement aux demandes et qui a été rempli, et

(iii) le droit payable pour la communication de documents;

b) une liste indiquant le personnel responsable de l'application de la présente loi et des installations ministérielles appropriées, notamment :

(i) l'adresse et le numéro de téléphone de chaque service ministériel qui reçoit des demandes,

(ii) le nom, l'adresse et le numéro de téléphone des agents d'information de chaque ministère, et

(iii) les installations disponibles dans chaque ministère pour la consultation de documents et l'obtention de copies de ceux-ci;

c) une description de l'organisation de chaque ministère, y compris un renvoi à tout index interne utilisé par le ministère afin d'administrer ses dossiers;

d) une description des documents sous la garde ou la responsabilité de chaque ministère, notamment :

(i) le titre de chaque groupe ou catégorie de documents,

(ii) une description fonctionnelle de chaque groupe ou catégorie de documents, et

(iii) des renseignements concernant la conservation, la disposition et s'il y a lieu, la destruction d'un groupe ou d'une catégorie de documents tels qu'ils sont contenus dans l'annexe préparé et approuvé à cette fin en vertu de la Loi sur la bibliothèque de la Législature.

(e) a subject index of terms describing the functions of departments and referring by number to the appropriate records relating to those functions; and
(f) a copy of this Act and the regulations.

Availability of Access Guide.
51 The designated minister shall cause a copy of the Access Guide to be made available
(a) in every departmental office which receives applications;
(b) in every public reading area of a departmental office; and
(c) in such other departmental offices, public libraries, and municipal offices as the designated minister deems appropriate.

Updating of Access Guide.
52 The designated minister shall cause to be published and distributed, at intervals of 2 years or less, supplements or replacements in an appropriate format for the purpose of keeping the Access Guide up to date.

Other duties and functions.
53 The designated minister
(a) shall, in order to facilitate access to records, cause to be kept under review the administration of this Act and the regulations within the departments; and
(b) may cause to be prepared and distributed to departments guidelines concerning the operation of this Act and the regulations.

Annual report of designated minister.
54(1) The designated minister shall report annually to the Speaker of the assembly on the administration of this Act and the regulations within each department during the year, and the Speaker shall cause the report to be laid before the assembly forthwith if the assembly is in session and if the assembly is not in session, within 15 days of the beginning of the next ensuing session.

e) un index des matières des termes qui décrivent les fonctions des ministères et qui renvoient, par numéros, aux documents se rapportant à ces fonctions; et
f) une copie de la présente loi et des règlements.

Diffusion du guide d'accès à l'information
51 Le ministre désigné est responsable de la diffusion d'une copie du guide d'accès à l'information :
a) dans tout service ministériel qui reçoit des demandes;
b) dans tout lieu de lecture public d'un service ministériel; et
c) dans les autres services ministériels, les bibliothèques municipales et les bureaux municipaux que le ministre désigné juge appropriés.

Mise à jour du guide d'accès à l'information
52 Afin de mettre à jour le guide d'accès à l'information, le ministre désigné doit faire publier et distribuer, à intervalles d'au plus 2 ans, des suppléments au guide ou de nouvelles pages, sous un format approprié.

Autres responsabilités
53 Le ministre désigné :
a) doit, afin de faciliter la communication des documents, voir au contrôle de l'application de la présente loi et des règlements à l'intérieur des ministères; et
b) peut faire préparer et distribuer à l'intention des ministères des directives concernant l'application de la présente loi et des règlements.

Rapport annuel du ministre désigné
54(1) Le ministre désigné doit présenter à l'Orateur de l'Assemblée un rapport annuel relatif à l'application de la présente loi et des règlements à l'intérieur de chaque ministère pendant l'année. L'Orateur doit faire déposer immédiatement le rapport devant l'Assemblée, si celle-ci est en session et si l'Assemblée ne siège pas, dans les 15 jours suivant le début de la session suivante.

Contents of report.
54(2) The annual report of the designated minister shall provide details of

(a) the number of applications received by each department during the year;

(b) the number of times during the year that the head of each department refused to give access to a record, and the specific provisions of this Act upon which the refusals to give access were based; and

(c) the fees charged and collected by each department for access to records during the year.

Annual report of Ombudsman.
55 The Ombudsman shall report annually to the Speaker of the assembly on the exercise and performance of the powers, duties and functions of the Ombudsman under this Act, and the Speaker shall cause the report to be laid before the assembly forthwith if the assemoly is in session and if the assembly is not in session, within 15 days of the beginning of the next ensuing session.

Review by committee.
56 Within 3 years after the coming into force of this section, such committee of the assembly as the assembly may designate or establish for the purpose shall undertake a comprehensive review of the operation of this Act and shall, within 1 year after the review is undertaken or within such further time as the assembly may allow, submit to the assembly a report on the operation of this Act, including any amendments to the Act which the committee recommends.

Delegation to access officers.
57(1) The head of a department may by written authorization designate one or more officers or employees of the department to be access officers for the purpose of exercising or performing such powers, duties and functions of the head under this Act as the head may specify in the authorization.

Effect of delegation.
57(2) Any action or decision of an access officer acting within the scope of the authorization referred to in subsection (1) shall, for purposes of this Act, be conclusively deemed to be the action or decision of the head.

Contenu du rapport
54(2) Le rapport annuel du ministre désigné doit fournir des indications concernant :

a) le nombre de demandes reçues pendant l'année par chaque ministère;

b) le nombre de demandes de communication d'un document refusées pendant l'année par le responsable de chaque ministère, ainsi que les dispositions précises de la présente loi sur lesquelles les refus de communication ont été fondés; et

c) les droits demandés et perçus pendant l'année par chaque ministère pour la communication de documents.

Rapport annuel de l'Ombudsman
55 L'Ombudsman doit présenter à l'Orateur de l'Assemblée un rapport annuel relatif à l'exercice de ses pouvoirs et fonctions prévus par la présente loi. L'Orateur doit faire déposer immédiatement le rapport devant l'Assemblée, si celle-ci est en session et si l'Assemblée ne siège pas, dans les 15 jours suivant le début de la session suivante.

Révision par le comité
56 Dans les 3 ans après l'entrée en vigueur du présent article, le comité de l'Assemblée que celle-ci désigne ou constitue pour les fins ci-après mentionnées, doit entreprendre une révision détaillée de l'application de la présente loi. Le comité doit, dans un délai d'un an après que la révision soit entreprise ou dans tout délai supplémentaire que l'Assemblée accorde, soumettre à celle-ci un rapport relatif à l'application de la présente loi, y compris les modifications à la Loi qu'il recommande.

Délégation aux agents d'information
57(1) Le responsable d'un ministère peut, par autorisation écrite, désigner des cadres ou des employés du ministère à titre d'agents d'information afin de remplir, en vertu de la présente loi, ses pouvoirs et ses fonctions qu'il peut préciser dans l'autorisation.

Effet de la délégation
57(2) Toute action ou décision d'un agent d'information agissant selon la portée de l'autorisation visée au paragraphe (1) est réputée de façon concluante être celle du responsable, pour les besoins de la présente loi.

Proceedings against Ombudsman prohibited.
58 No proceeding lies against the Ombudsman, or any person employed by or acting under the authority of the Ombudsman, for anything done, reported or said in good faith in the exercise or performance, or intended exercise or performance, of the powers, duties and functions of the Ombudsman under this Act.

Proceedings against government prohibited.
59 No proceeding lies against the head of a department, any access officer or other officer or employee of a department, or the government or any department, for

(a) the giving of access in good faith to any record under this Act; or

(b) any consequences which flow from such access, or

(c) the failure to give any notice required under this Act, if reasonable care was taken to give the required notice.

Obstruction.
60 Every person who without lawful justification

(a) willfully obstructs, hinders, or resists any other person in the exercise or performance of that other person's powers, duties or functions under this Act, or

(b) refuses or willfully fails to comply with any lawful request or other requirement of any other person under this Act; or

(c) willfully makes any false statement to, or willfully misleads or attempts to mislead, any other person in the exercise or performance of that other person's powers, duties or functions under this Act;

is guilty of an offence punishable by summary conviction.

Act inapplicable to certain records.
61 This Act does not apply to

(a) any record which is published or available for purchase by the public; or

Interdiction de procédures contre l'Ombudsman
58 Aucune procédure ne doit être intentée contre l'Ombudsman ou contre toute personne employée par celui-ci ou agissant sur son ordre, pour les actes accomplis, les rapports ou comptes rendus établis ou les paroles prononcées de bonne foi dans l'accomplissement effectif ou projeté des pouvoirs et fonctions qui lui sont conférés en vertu de la présente loi.

Interdiction de procédures contre le gouvernement
59 Aucune procédure ne doit être intentée contre le responsable d'un ministère, un agent d'information ou un autre cadre ou employé d'un ministère, le gouvernement ou tout ministère, relativement :

a) à la communication d'un document faite de bonne foi dans le cadre de la présente loi;

b) à toute conséquence qui découle d'une telle communication; ou

c) au défaut de donner les avis prévus par la présente loi, si les personnes mentionnées ci-dessus ont fait preuve de la diligence nécessaire.

Entrave
60 Est coupable d'une infraction punissable sur déclaration sommaire de culpabilité toute personne qui, sans justification légale :

a) entrave délibérément l'action de toute autre personne dans l'accomplissement de ses pouvoirs ou fonctions qui lui sont conférés en vertu de la présente loi, ou résiste à une telle action;

b) refuse ou omet délibérément de se soumettre à une requête légale ou à une autre exigence de toute autre personne, lesquelles sont prévues par la présente loi; ou

c) fait délibérément une fausse déclaration à toute autre personne dans l'accomplissement de ses pouvoirs ou fonctions qui lui sont conférés en vertu de la présente loi, ou trompe ou tente de tromper ladite personne

Inapplication de la loi à l'égard de certains documents
61 La présente loi ne s'applique pas :

a) à un document qui est publié ou mis en vente dans le public;

(b) any record contained in a library or museum solely for purposes of public reference or exhibition; or

(c) a private record placed in the Provincial Archives, the Legislative Library or the Manitoba Museum of Man and Nature by or on behalf of any person or organization other than a department.

Regulations.

62 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make regulations ancillary thereto and not inconsistent therewith; and every regulation made under, and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations not inconsistent with this Act

(a) prescribing the forms to be used for applications and complaints;

(b) prescribing the fees payable for access to records;

(c) specifying the procedures to be followed in taking and processing applications within individual departments;

(d) specifying the manner or place in which access to records shall be given within individual departments; and

(e) prescribing such other procedures as may be necessary for the proper administration of this Act.

Act binding on Crown.

63 This Act is binding on Her Majesty in right of Manitoba.

Other access rights preserved.

64(1) Subject to subsection (4), nothing in this Act or the regulations, including the exemption in section 48, shall be interpreted to restrict or extinguish

(a) any custom or practice; or

(b) any right or privilege, whether created by another Act of the Legislature, a regulation thereunder, or otherwise;

b) à un document qui se trouve dans une bibliothèque ou un musée, uniquement à des fins de référence ou d'exposition pour le public; ou

c) à un document privé qui est déposé aux Archives provinciales, à la bibliothèque de la Législature ou au musée de l'Homme et de la Nature du Manitoba, par ou pour toute personne ou organisation extérieure à un ministère.

Règlements

62 Le lieutenant-gouverneur en conseil peut prendre des règlements d'application compatibles avec la présente loi et conformes à son esprit; ces règlements ont force de loi. Il peut notamment, par règlement :

a) prescrire les formules devant être utilisées relativement aux demandes et aux plaintes;

b) fixer les droits payables pour la communication des documents;

c) déterminer les procédures devant être suivies relativement aux demandes reçues et traitées à l'intérieur de chaque ministère;

d) déterminer les modalités d'exercice de l'accès aux documents ou le lieu de leur consultation, à l'intérieur de chaque ministère; et

e) prescrire toute autre procédure nécessaire pour l'application adéquate de la présente loi.

La Couronne est liée

63 La présente loi lie Sa Majesté du chef du Manitoba.

Autres droits de communication maintenus

64(1) Sous réserve du paragraphe (4), aucune disposition de la présente loi ou des règlements, y compris l'exemption prévue à l'article 48, ne doit être interprétée de façon à restreindre ou à éteindre

a) une coutume ou une pratique; ou

b) un droit ou un privilège, qu'il soit créé par une autre loi de la Législature, un règlement pris en vertu de cette loi, ou d'une autre façon,

whereby any person, including a public officer acting in the course or scope of duty, is authorized to gain access to any record, or any group or class of records, in the custody or under the control of a department.

When access right arises
64(2) Subsection (1) applies regardless of whether the custom, practice, right or privilege arose before, or arises after, the coming into force of this section.

Access procedures under other Acts
64(3) Without restricting the generality of subsection (1), nothing in this Act or the regulations affects any form, fee or procedure established by or under any other Act of the Legislature, or any regulation thereunder, for gaining access to any record referred to therein.

Act prevails over Schedules
64(4) Where there is a conflict between this Act and any access provision or access restriction contained in a Schedule prepared and approved under The Legislative Library Act, this Act prevails.

Confidentiality provisions in other enactments
65 Every provision in any other Act of the Legislature or any regulation thereunder which restricts or prohibits access by any person to any record in the custody or under the control of a department is subject to this Act, and applies only to the extent that it falls within the exemptions in this Act.

par lequel toute personne, notamment un fonctionnaire agissant dans l'exercice de ses fonctions, est autorisée à obtenir la communication d'un document ou d'un groupe ou d'une catégorie de documents sous la garde ou la responsabilité d'un ministère.

Droits de communication et application du paragraphe (1)
64(2) Le paragraphe (1) s'applique, que les coutumes, les pratiques, les droits ou les privilèges aient pris naissance avant ou après l'entrée en vigueur du présent article.

Procédures de communication en vertu d'autres lois
64(3) Sans préjudice de la portée générale du paragraphe (1), aucune disposition de la présente loi ou des règlements ne porte atteinte aux formules, aux droits ou aux procédures, établis en vertu de toute autre loi de la Législature ou des règlements pris sous le régime d'une telle loi, relativement aux dispositions qui se rapportent à la communication d'un document.

Priorité de la présente loi sur les annexes
64(4) La présente loi prévaut, lorsqu'il y a incompatibilité entre celle-ci et toute disposition ou restriction qui concerne la communication d'un document et qui est contenue dans une annexe préparée et approuvée en vertu de la Loi sur la bibliothèque de la Législature.

Autres dispositions portant sur l'aspect confidentiel
65 Toute disposition qui est contenue dans une autre loi de la Législature ou dans les règlements pris sous le régime de cette loi et qui restreint ou interdit la communication à une personne d'un document sous la garde ou la responsabilité d'un ministère est soumise à la présente loi et ne s'applique que dans la mesure où elle est comprise dans les exemptions prévues à la présente loi.

Other enactments prevail

66 Without restricting the generality of subsection 64(1), and notwithstanding section 65, this Act does not apply to the right of access and the procedures for gaining access to records, and the restrictions on access to records, contained in the following provisions:

(a) The Child Welfare Act and any regulations thereunder, and any enactment which may be substituted therefor.

(b) Subsections 63(1) and (2) and section 64 of The Workers Compensation Act.

(c) Sections 31 to 33 of The Vital Statistics Act.

(d) Section 9 of The Statistics Act.

(e) The Securities Act.

S.M. 1988-89, c. 13, s. 12.

Transfer, storage or destruction

67 Nothing in this Act shall be interpreted to prohibit the transfer, storage or destruction of any record in accordance with any other Act of the Legislature or any regulation thereunder.

Reference in Continuing Consolidation

68 This Act may be referred to as chapter F175 of the Continuing Consolidation of the Statutes of Manitoba.

Commencement of Act

69 This Act comes into force on a day fixed by proclamation.

NOTE: This Act was proclaimed in force September 30, 1988. See Manitoba Gazette No. 35, August. 27, 1988, page 1,167.

Priorité d'autres textes législatifs

66 Sans préjudice de la portée générale du paragraphe 64(1) et par dérogation à l'article 65, la présente loi ne s'applique pas aux droits de communication et aux procédures relatives à l'obtention de la communication de documents ainsi qu'aux restrictions qui concernent la communication de documents et qui sont contenues dans les dispositions suivantes :

a) la Loi sur la protection de l'enfance, les règlements pris sous le régime de cette loi et tout texte législatif qui peut être substitué à cette loi;

b) les paragraphes 63(1) et (2) de la Loi sur les accidents du travail ainsi que l'article 64 de cette loi;

c) les articles 31 à 33 de la Loi sur les statistiques de l'état civil;

d) l'article 9 de la Loi sur la statistique;

e) la Loi sur les valeurs mobilières.

L.M. 1988-89, c. 13, art. 12.

Transfert, conservation ou destruction de documents

67 Aucune disposition de la présente loi ne doit être interprétée de façon à interdire le transfert, la conservation ou la destruction d'un document, conformément à toute autre loi de la Législature ou à tout règlement pris sous le régime de cette loi.

Codification permanente

68 La présente loi est le chapitre F175 de la Codification permanente des lois du Manitoba.

Entrée en vigueur

69 La présente loi entre en vigueur à la date fixée par proclamation.

REMARQUE : La présente loi est entrée en vigueur par proclamation le 30 septembre 1988 (voir la Gazette du Manitoba du 27 août 1988 [no 35], à la page 1,167).

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